INHERITANCE
IN
ISLAM

*All that we
have to know
about inheritance*

جبت مالَه، الو لاد و لأقربون مما فلّ والِدانِ وقد خلّ جبت معروضاً [٧] وإذا حضر ٱلقِسمة أولو ٱلقربى وٱليتمى وٱلمسـٰكِينُ فٱرزُقوهم مِّنهُ وقولوا لهم قولًا مّعروفًا [٨] وليخشَ ٱلذين لو تركوا مِن خلفِهم ذُرّيّةً ضِعـٰفًا خافُوا عليهِم فليتّقُوا ٱلله وليقُولُوا قولًا سدِيدًا

Muhammad Abdul Rauf

AL-MĪRĀTH

INHERITANCE

ACCORDING TO THE SHARĪ'AH LAW OF ISLAM

BY
MUHAMMAD ABDUL RAUF

AL-SAADAWI PUBLICATIONS

Table of Contents

بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيمِ

INTRODUCTION

*From what is left by parents and those nearest
related there is a share for men; and from what
is left by parents and those nearest related
there is a share for women, whether the prop-
erty be small or large, a determined share.*
(Qur'ān 4:7)

Jābir Ibn 'Abd Allāh, may Allāh be pleased with
him, a distinguished young Companion of the Prophet,
peace and blessings be upon him,[1] related: Once the
Messenger of Allah went for a walk and took me along
with him. We walked until we reached (a place called)
al-Aswāt, where the grandmother of Khārijah Ibn Zayd
Ibn Thābit was staying. We visited her. She spread a
piece of cloth, on which we sat, in the middle of an area
surrounded by date palm trees. To entertain us, she had
a ewe slaughtered and hung a waterskin full of water
for us. While we were talking, a woman came holding

---

[1] The phrase "peace be upon him" (*sallā Allāhu 'alayhi wa sallām*)
traditionally comes right after any mention of the Prophet,
whether spoken or written. In the case of the Companions of the
Prophet and other prominent Muslims, the corresponding phrase
is "may Allah be pleased with him (or her) (*radiy Allāhu 'anhu*
or *radiy Allāhu 'anhā*). In conformity with the contemporary us-
age, the first phrase is mentioned after the first mention of the
Prophet's name, and the second phrase is mentioned after the
first appearance of any Companion's name. Thereafter, they are
assumed.

the hands of two girls. She said: "O Messenger of Al-
lah. These are the two daughters of Thābit Ibn Qays or
(the narrator was uncertain) of Sa'd Ibn al Rabī' (her
deceased husband). Sa'd was martyred while fighting
on your side on the day of Uḥud. Their (paternal) uncle
has taken all of Sa'd's wealth. Interest in a marriage-
able girl depends on her wealth."

The Messenger of Allah replied: "Maybe Allāh will
provide guidance in solving this issue."

Jābir continued: Soon the (Qur'ānic) *āyah* of Sūrat al
Nisā', which deals with inheritance, was revealed. The
Messenger of Allah sent for Sa'd's brother and when he
came, the Prophet told him: "Give Sa'd's daughters two-
thirds of their father's wealth, give his widow one-eighth,
and you take the rest."[2]

Reference in this *ḥadīth* is made to the Qur'ānic *āyāt*,
which may be rendered as follows:

> Verily those who devour the wealth of orphans
> wrongly, they do but swallow fire into their bellies,
> and they will soon endure a blazing fire. Allah di-
> rects you as regards (the inheritance of) your chil-
> dren: to the male a portion equal to that of two
> females. If there are (only) daughters, two or more,
> their share is two-thirds of the inheritance. If there
> is only one, her share is one-half. As for his par-
> ents, each of them receives one-sixth if the de-
> ceased has (any) child. If he has no child and his
> parents inherit from him, one-third belongs to his
> mother (in the absence of two or more brothers). If

---

[2] 'Umar Ibn 'Alī al Daraqutnī (Beirut: Dār al Fikr, 1414), 2:34. This
ḥadīth is also recorded in other authentic *ḥadīth* compilations, in-
cluding that of Imām Muslim Ibn Ḥajjāj.

the deceased left brothers or sisters or a mixture of both, the mother receives one-sixth. (The distribution in all cases should be) after the payment of legacies and debts. You do not know which of your parents or children are nearer to you in benefit. There is for you one-half of what your wives leave, if they have no child. If they have a child, you receive one-fourth of their inheritance, after the deduction of their legacies and debts. And for your wives, they receive one-fourth of what you leave behind if you have no child. If you have a child, they receive one-eighth of what you leave, taking into consideration your legacies and debts. When a man or a woman whose inheritance is under consideration has left neither ascending nor descending relatives who are entitled to inherit, but has left a (maternal) brother or a sister, each receives one-sixth. If there are more than two, they all share in the third, after the payment of legacies and debts. (Qur'ān 4:11-12)

In another *ḥadīth*, Jābir says: "The Prophet gave Sa'd's wife one-eighth and his two daughters two-thirds. The remainder was given to the parents."[3]

Imām 'Alī Ibn Abū Ṭālib was once told: "'Abd Allāh Ibn Mas'ūd ruled that the entire *tarikah* (inheritance) should be given to the maternal brother," thereby depriving the other brothers. The Imām said: "May Allāh bestow His mercy upon him. He is a (distinguished) jurist. I would rather give him one-sixth, and then let them share the remainder."[4]

---

[3] Ibid., 39.

[4] Ibid., 46.

Jābir also related: Once I was sick (with fever), and the Messenger of Allah visited me. I had seven sisters living with me. The Messenger of Allah came with Abū Bakr. I was unconscious when they arrived, for I had fainted. While he was with us, the Messenger of Allah performed ablution and poured the water he had used on my head. (I regained consciousness) and asked him: "O Messenger of Allah. What shall I do with my wealth, for I have no off-spring or ancestor to leave it to."

A while later, the Messenger of Allah returned and told me: "Jābir. Allāh has revealed what to do with your sisters." He then recited:

> They ask you for a pronouncement. Say: Allah has pronounced for you concerning distant kindred. If a man died childless and he has a sister, she receives one-half of the inheritance. He will inherit her if she dies childless. If there are two sisters, they receive two-thirds of the inheritance. If there are brothers and sisters, the man receives the equivalent of the share of two women. Allah explains this to you so that you will not err. Allah knows all things. (Qur'ān 4:176)

It is related that Caliph 'Umar Ibn al Khaṭṭāb went to Zayd Ibn Thābit's home to ask him (about an important issue). He found Zayd resting his head in the lap of a female slave who was combing his hair. Zayd, apparently embarrassed, pulled his head away from her lap, but the Caliph told him: "Let her continue combing your hair."

Zayd then said: "O Commander of the Faithful. I wish you had sent for me, for I would have come to you."

The Caliph replied: "It is I who need your help, and so I should come to you. I have come to discuss the inheritance due to the father's father."

Zayd asked: "What do you think?"

The Caliph replied: "There is no (Qur'ānic) revelation on this issue to which we could adhere without modifiying it one way or the other. It is left to us (to decide). What is your opinion? I shall follow what you advise."

Zayd declined to give an opinion, and the Caliph went away feeling angry and disappointed. At the same time the next day, the Caliph returned and pressed Zayd very hard until he wrote his answer on a piece of leather. 'Umar took it and, while delivering the Friday *khutbah* (sermon), said: "Zayd Ibn Thābit has ruled in the case of a father's father's inheritance, and I have executed it." (This was the ruling about the father's father's sharing the inheritance among brothers if there is no heir with a fixed share.)

Once when Caliph 'Umar was delivering a Friday sermon from the pulpit of the Prophet, he said: "By Allāh, I will not leave behind a thing of greater importance to me than the question of *kalālah*.[5] I (repeatedly) asked the Messenger of Allah about it until he answered me more seriously than he had ever spoken to me about anything else. He touched my chest with his finger and asked: "O 'Umar. Is it not sufficient for you to have the *āyah* of the summer (revealed during the preceding summer season) located at the end of Sūrat al Nisā'?" This *āyah* reads:

> They ask you (about a legal decision). Say: Allah provides you guidance on the question of *kalālah*. If a person dies leaving behind no child but only a

---

[5] When a person dies without leaving behind any relatives or children.

sister, she receives one-half of what he leaves behind. (If the deceased is a woman and leaves a brother behind), he inherits from her if she has no child. If there are two (or more) sisters, they receive two-thirds of his wealth. If there is a group of siblings, male and female, the male receives double the share of the female. (Qur'ān 4:176)

Muḥammad Ibn 'Abd al Raḥmān Ibn Abū Laylā related that the daughter of al-Ḥamzah said: "My freed slave died, leaving behind his daughter and myself. The Messenger of Allah gave me one-half of the *tarikah* and gave the other half to the daughter."[6]

A man asked Abū Mūsā al Ash'arī (governor of Kūfah) and Sulaymān Ibn Rabī'ah al Bāhilī (a judge) how to distribute the inheritance of a person who had died leaving behind his daughter, a son's daughter, and a full sister. They told him: "The daughter receives one-half, and the rest should be given to the sister." They also advised him to consult 'Abd Allāh Ibn Mas'ūd, believing that he would confirm their views. The man did as they suggested, but Ibn Mas'ūd replied: "I will give the same decision that the Messenger of Allah did in an identical situation." He then gave one-half to the daughter, one-sixth to the son's daughter (making a total of two-thirds), and the rest to the sister."

Ma'qīl Ibn Yasār related: The Messenger of Allah ruled that the father's father should receive one-sixth (of the *tarikah*).

[6] He related this on the authority of al Ḥakam, on the authority of 'Abd Allāh Ibn Shaddād, on the authority of his maternal sister, the daughter of al-Ḥamzah (the Prophet's uncle who was martyred on the day of Uḥud).

Abū Dhu'ayb related that a (maternal) grandmother came to Caliph Abū Bakr al Ṣiddīq and asked him about her rightful share in the *tarikah* of her deceased grandchild. Caliph Abū Bakr told her: "There is nothing assigned to you in the Book of Allah, and I know of nothing stated for you in the *Sunnah* (*ḥadīth*) of the Messenger of Allah. Go home and wait until I can inquire about your case among those who will know how to answer your question."

In his inquiry, Caliph Abū Bakr was told by al Mughīrah Ibn Shu'bah: "I was present when the Messenger of Allah gave the grandmother (*jaddah*) one-sixth (of the *tarikah*).

Abū Bakr asked him: "Did anyone else witness this event?"

"Yes," al-Mughīrah replied, "a man of the Anṣār[7]: Muḥammad Ibn Maslamah." This man, when summoned by Caliph Abū Bakr, confirmed what al Mughīrah Ibn Shu'bah had said. Caliph Abū Bakr then ruled with a clear conscience that the mother's mother was to receive one-sixth of her grandchild's inheritance.

After the death of Abū Bakr and the ascendance of 'Umar Ibn al Khaṭṭāb to the caliphate, a (paternal) grandmother asked Caliph 'Umar about her share in her grandson's *tarikah*. Caliph 'Umar told her: "There is nothing for you in Allah's Book, and the earlier decision (by Caliph Abū Bakr) did not include you (as it was made for the maternal grandmother). I will not innovate in matters of inheritance (by assigning a separate share to you.) It is only one-sixth. When there are two grandmothers, both should

---

[7] The Anṣār were a group of Muslims who lived in Yathrib (later to be known as Madīnah). They supported the Prophet in his struggle against the Quraysh of Makkah.

share it. When there is only one grandmother, she receives the entire one-sixth."[8]

Mu'ādh Ibn Jabal, while he was in Yemen, had to settle the case of a person who died leaving behind a daughter and a sister. He ruled that one-half of the *tarikah* should be given to the daughter, and the other half should be given to his sister.[9]

According to al-A'mash, on the authority of Ibrāhīm, Imām 'Alī ruled in a case of a man who died leaving behind a wife, his mother, and his father. He stated that the mother should be given one-third of the total inheritance. He made the same ruling in the case of a wife who died leaving behind her husband and her parents.[10]

Caliph 'Uthmān Ibn 'Affān, according to Ibn al Muhallab, gave the wife one-fourth of the *tarikah*, the mother one-third of the remainder, and the father the remaining two shares.[11] Zayd Ibn Thābit, when faced with the case of a woman who had died leaving behind her husband and her parents, gave the husband one-half of the *tarikah* and the mother one-third of the remainder.[12]

Ibrāhīm said: "('Abd Allāh) Ibn 'Abbās deviated from the views of the *ummah* of the *qiblah*, for he gave the mother one-third of the *tarikah* in the case of a husband who died leaving behind his parents and his wife."[13]

---

[8] Ibn Mājah, 2:910.

[9] *Sunan al Dārimī* (Beirut: Dār al Fikr, 1414), 237.

[10] Ibid.

[11] Ibid., 236.

[12] Ibid.

[13] Ibid.

Zayd Ibn Thābit, in the case of a wife who died leaving behind her husband and her parents, ruled that the husband should receive one-half of the *tarikah* and that his mother should receive one-third of the remainder.[14]

Zayd Ibn Thābit ruled that when there are surviving sisters and daughters, the sisters should be treated as *'aṣabah* (heirs with no fixed shares) and receive only the remainder.[15]

It is from such Qur'ānic texts and relevant *ḥadīths* as those quoted above, and from the recorded rulings given by the Prophet's Companions, that we derive our knowledge of the Islamic law of inheritance, which was elaborated and codified by the leading Muslim jurists of the second and third *hijrī* centuries.

May Almighty Allāh guide us and protect us from falling into any errors.[16] *Āmīn.*

Post-Death Legitimate Claims

When a person dies and leaves behind some wealth (e.g., land, cash, livestock, or other items of financial

---

[14] Ibid., 236.

[15] Ibid., 237.

[16] Our main concern in this work is accuracy and clarity, and guarding against misunderstanding and confusion. The subject of our study, the laws of inheritance (*mawārīth*), is regarded as the most complex and most difficult part of Islamic jurisprudence, at least some of its chapters. Scholars were asked questions on inheritance to discover the degree of their intelligence and knowledge, as we will see in the course of this study. If we consult the standard works on jurisprudence (e.g., Imām Muḥīy al Dīn al Nawawī's *Al Majmū'*), we find these distinguished authors repeating some points, not for the sake of emphasis but rather to refresh the memory of the learner.

value), all of these properties are called *mīrāth* or *tarikah*. The question is: What should be done with this *tarikah*?

First, if the deceased had not yet performed the obligatory pilgrimage to Makkah, (*ḥājj*), someone must perform it for him or her during the immediately following season. The cost is to be paid from the *tarikah*. The same rule applies to any unpaid *zakāt*. These two items are called *ḥaqq Allāh*, (the right of Allah). After they have been settled, all debts of the deceased must be paid off. The Messenger of Allah, whenever he was invited to lead the funeral prayer (*janāzah*), would inquire whether the deceased had any unsettled debt? If he or she had not settled such a financial duty, the Prophet would not pray over the dead, but rather would ask a Companion to lead the prayer.

If the deceased had made a will, (*waṣiyyah*), indicating who should receive or share his or her wealth, (e.g., individuals, charitable institutions, a particular mosque, or a religious endowment), all debts and wills must be settled before the money can be disbursed. However, the will is limited to a maximum of one-third of the *tarikah*. If a person's will involves more than that amount, the assigned will above one-third can be disbursed only if the deceased person's rightful heirs agree. After this, all necessary funeral costs, (e.g., washing, shrouding, transportation to the cemetery, and the cost of the cemetery plot), should be added to the above items.

The only exception to this rule is the case of a deceased wife, for all of these costs must be borne by the surviving husband. Should a Muslim die destitute, the cost of his or her funeral should be borne by the Muslim treasury, (*bayt al māl*). As such an institution does not exist at this time, such funeral costs should be borne by

the members of the surrounding Muslim community. After these various costs have been met, the remainder of the *tarikah* is to be distributed among the heirs.

All of the above means that five things are related to the *tarikah* of the deceased: Allah's right, (e.g., unperformed *ḥājj*, unpaid *zakāt*, or atonement for a broken oath or missed obligatory fasting), payment of debts, execution of the will, (if any), the funeral's cost, and the rights of heirs.

Now another important question arises: Who are the legal heirs according to the Sharī'ah? Here they are:

THE LEGITIMATE HEIRS

Two groups of relatives are entitled to share the *tarikah* of the deceased: the male heirs and the female heirs.

The male heirs are:
1. The husband
2. The son(s)
3. The son of the son of the deceased or his son's son's son, no matter how far down he goes, but it must be through the agnatic (male) line
4. The father
5. The father's father or great-grandfather
6. The full brother or brothers
7. The paternal brother(s), (i.e., the son(s) of his or her father from another mother)
8. The maternal brother(s); (i.e., the son(s) of his or her mother from another father)
9. The son(s) of the full brother.
10. The son(s) of the paternal brother
11. His or her full uncle, (i.e., the full brother of the deceased person's father)
12. The father's brother
13. The son(s) of the full uncle

14. The son(s) of the father's brother
15. The master of a freed slave (*mawlā*).[17]

The female heirs are:

1. The wife or wives of the deceased man, up to a maximum of four
2. His or her mother
3. His or her daughter(s)
4. His or her son's daughter(s) or daughter of the son's son; there is no limit to this line of descent, but it must be through the agnatic (male) line
5. His or her full sister(s)
6. His or her paternal sister(s)
7. His or her maternal sister(s)
8. The paternal grandmother (i.e., the deceased's father's mother or great-grandmother on the male side)
9. The maternal grandmother (mother's mother), and
10. The female *mawlā* (the woman who freed the deceased)

It is possible that the deceased can be survived by all of these heirs, except in the case of the spouse. A husband

---

[17] This applied before the abolition of slavery. It does not mean that Islam condoned slavery; rather, Islam severely reduced its sources by limiting them to situations in which the Muslims were attacked unjustly by their enemies. When the Muslims were victorious, they freed their prisoners unconditionally, or for a ransom when resources were needed, or, in exceptional cases, enslaved them as a warning to potential aggressors. At present, however, slavery does not exist. It is mentioned here only to complete the traditional list. The master inherited from his or her freed slave when there were no other heirs to receive the *tarikah*. The daughter of al-Ḥamzah, the Prophet's uncle, shared the inheritance of her freed slave, as did his own daughter, who was born a free woman.

may be survived by his wife and a wife by her husband, but no one can be survived by a husband and a wife.

From the above, we learn that there are three factors or types of relationship that give a person a right to another person's inheritance. They are:

TIES PROMPTING THE RIGHT OF INHERITANCE

1. *Marriage*. It gives the surviving spouse the right to inherit the deceased one.
2. *The Blood Relationship*, which gives the right of inheritance to the male ancestors, (the father and father's fathers), to the female ancestors, (the mother, the mother's mothers, the father's mother, and the mother of the father's father), to the siblings, and to the full and the father's brothers, to the son of the full uncle and the son of the father's brother.
3. *Al Walā'*, the bond uniting the deceased person to his or her former master or mistress, but this type of relationship no longer exists.

If the deceased is survived by his or her spouse, as well as by all members of the above categories, do they all share in the *tarikah*? No, they do not, for most of these potential heirs may be deprived of their right to inherit by the presence of a closer heir. Very often, a potential heir is blocked by the relative through whom he or she is related to the deceased, such as the father's father being blocked by the surviving father. The father also blocks all male and female siblings. Similarly, the mother blocks the grandmother. Such blocking is called *ḥajb*. Relatives who cannot inherit, such as the maternal father's father and the maternal uncle, (*khāl*), are called blood kindred (*dhawu al arḥām*)

FACTORS WHICH DEPRIVE A PERSON FROM INHERITING

As much as there are three factors which entitle a person to inheritance, there are three factors any one of which deprives a potential heir from his or her right to inherit. They are:

1. Ikhtilāf al Dīn. When two persons belong to different religions, (e.g., when a Muslim husband has a Christian or Jewish wife), the husband and wife do not inherit from the surviving spouse. Imām al Bukhārī and Imām Muslim related in their authentic *ḥadīth* compilations that the Messenger of Allah said: "A Muslim does not inherit from a non-Muslim, and an unbeliever should not inherit from a Muslim." The statement that a non-Muslim cannot inherit from a Muslim is agreed upon unanimously. However, depriving a Muslim of his or her share in the inheritance of a non-Muslim is disputed by Mu'ādh Ibn Jabal, Mu'āwiyah Ibn Abū Sufyān, and some other authorities who ruled that a Muslim can inherit from a non-Muslim relative. According to this view, a Muslim husband can inherit from his Christian or Jewish wife. What is important is the existing situation at the time of the person's death. Imām Ibn Ḥanbal states that if a non-Muslim relative embraces Islam before the *tarikah* is distributed, he or she should receive the due share in his or her Muslim relative's *tarikah*.

2. Al-Qatl. A person who caused the death of someone else cannot inherit from the deceased. If a person fatally wounded his or her father but the father did not die immediately, and the one who caused the death died before the father's death, the father would inherit from the person who caused his death. All authorities on Islamic jurisprudence unanimously agreed on this ruling when the

death of the victim was caused by a deliberate, pre-meditated action. Thus, the murderer cannot inherit any of the victim's *tarikah*.

Jurists disagreed, however, when the death was unintended. Take the case of a son who dies during or after his father beats him for committing an unbecoming action or while teaching him. Imām al Shāfi'ī ruled that any involvement in the resulting death deprives the involved person from inheriting, regardless of the underlying intent. Even a judge or a witness in a case resulting in a death sentence cannot inherit anything. It does not matter if the potential heir was the judge or a witness, or did or said anything that corroborated the death sentencing.

Even when the act leading to death was unintentional, like falling from a roof on top of one's relative or rolling over him while sleeping, that person cannot receive any share of the inheritance. If someone dug a well to draw water and his relative fell into it and died, some jurists ruled that he or she could not inherit from the deceased. The Mālikī school, however, allows people to inherit from the deceased if the death was neither intentional or premeditated.

Here is an interesting question. If a wife dies while delivering her baby, should her husband (who impregnated her) be deprived of his share of the inheritance? The answer is "no," for she did not die as a result of the sexual act leading to her pregnancy, but by difficulties during the delivery.

The Ḥanafī and Mālikī schools, as well as Imām Ibn Ḥanbal, consider the intention behind the action leading to the death of the person being inherited as the basis of deprivation. Imām al Shāfi'ī, however, intended to close the door completely before any person who, out of his or her desire to inherit from another, might be tempted to cause

the death of his or her relative in order to receive the deceased's wealth totally or in part through inheritance.

3.   Slavery. A slave could not inherit from his or her master, because whatever a slave earned went directly to the master. One of the most noble and worthy achievements of the United States has been the complete abolition of slavery. Islam paved the way for this by greatly reducing slavery's underlying causes. Islam stopped people deceived by their physical or political power from raiding other people to enslave the survivors.

Only when an aggressive group unjustly attacks the Muslims in order to slaughter their able-bodied men and enslave their women, elders, and children, are Muslims allowed to defend themselves, to free themselves, and establish peace on Earth. After victory, if the Muslims have taken prisoners, the Muslim leadership decides what to do with them so that the cause of Islam will benefit: free them gratuitously, demand a ransom, or enslave them as a warning to potential aggressors. Muslims are urged to treat slaves kindly, to feed them from the same food that they eat, to dress them in the same way as they dress themselves, and not to burden them with hard tasks. Furthermore, freeing a slave was not only a greatly meritorious deed whereby Allah's pleasure could be sought, but it was also an obligatory measure for expiation and as atonement for an un-Islamic action.

AL ḤAJB (BLOCKING)

The term *ḥajb* means "hiding "or "blocking." In the context of inheritance, it means to block a potential heir from inheritance.

Only three categories of heirs cannot be completely deprived of inheritance: the spouse of the deceased, the

child (son or daughter of the deceased), and his or her parents. *Ḥajb* occurs in the following situations:

IBN AL-IBN, *"The Son of the Son of the Deceased."* This relative is blocked by the presence of the son, whether he is the father of this son's son or the brother of his father. Recently, some Muslim countries have introduced a law according to which the grandson (the son of a son whose father had died earlier) should not be completely deprived of his father's father's inheritance in the case of a surviving uncle (a son of the deceased). Rather, he should receive a share that does not exceed one-third of his father's father's *tarikah*. The law considers this a compulsory will, (*waṣiyah wājibah*), even though his father's father had failed to do it himself. Similarly, the son's daughter (*bint al ibn*) is blocked by the surviving son, and a son's son is blocked by a son's son who is closer to the deceased than he. So, the son of the son's son is blocked by a son's son.

AL-JADD, *"The Father's Father."* The grandfather is blocked by the father (*ab*), as the former is related to the deceased through the latter.

AL-JADDAH, *"The Mother's Mother."* The grandmother is blocked by the mother of the deceased for the same reason. Similarly, a remoter grandmother is blocked by the survival of a closer grandmother. A great-grandfather is blocked by the survival of a father's father who is closer to the deceased than he, and a grandmother is blocked by a surviving closer grandmother.

AL-AKH (pl. IKHWAH), *"Siblings."* The brother and brothers, whether they are full brothers or not, as well

as the sister, are blocked by the son (*ibn*) or sons (*abnā'*), the grandson (*ibn al ibn*), and the father (*ab*).

AL-AKH LI-AB, *"Paternal Brother."* Paternal brothers are brothers related to the deceased through their common father but who had different mothers. They are blocked by full brothers, in addition to the above three factors, (son, son's son, or father).

However, full and paternal brother(s) are not blocked by a surviving grandfather, (a father's father), according to the Shāfi'ī school, which has ruled that the father's father and the deceased's brothers and sisters have an equal relationship to the deceased. Imām Abū Ḥanīfah and his school regard the father's father as being in the same position as the father (if the father is absent). Therefore a surviving father's father blocks all the deceased's male and female siblings. In this regard, Imām Abū Ḥanīfah followed the practice of Caliph Abū Bakr and some other Companions. However, Imām al Shāfi'ī and other imāms follow the view of Imām 'Alī Ibn Abū Ṭālib.

AL-AKH LI-UMM, *"The Maternal Brother and Sister"* (*the son and daughter of the deceased's mother by a different father*). The maternal brothers and sisters are blocked, in addition to the above four factors, by the father's father, and by the daughter of the deceased, and by the deceased's grand-daughter (his son's daughter). Another exceptional feature here is that these relatives are not blocked by the surviving mother or a maternal grandmother (mother's mother), although they are related to the deceased person through them.

The maternal brothers and sisters are deprived of inheritance by any of the following surviving relatives: the son, the paternal grandson (a son's son), the father, the pa-

ternal grandfather (a father's father), the daughter, and the paternal grand-daughter (the son's daughter). They are not blocked, however, by a full or a paternal brother, except in the view of Imām Abū Ḥanīfah. Distributing the shares among brothers and sisters, along with a surviving paternal grandfather (a father's father) according the Shāfi'ī school, will be dealt with in a separate chapter.

The Daughter of the Deceased's Son, (*the agnatic granddaughter*). The agnatic grand-daughter is blocked by the surviving two or more daughters of the deceased, except when she has a brother who transforms her from an heir with a fixed share to a relative entitled to a general share, (this distinction will be explained later). In such a case, this brother is called "the blessed brother," (*al akh al mubārak*). In addition to this brother, a brother's son, and a brother's son's son, preserve the right of this sister—no matter how low they may go down in descent.

The Full and Paternal Sister(s). Full and paternal sisters are blocked by the presence of two or more daughters of the deceased, unless they have a brother, who would make them *'aṣabah*. This brother is known as "the blessed relative," (*al qarīb al mubārak*). His son (the paternal nephew) cannot confer this status on his aunts or his sisters for reasons to be discussed later. In some situations, which will also be considered later, this brother may block his sisters. In such a situation, he is known as "the inauspicious brother" (*al akh al mash'ūm*).

The mother blocks both the paternal and maternal grandmothers. If there is no surviving mother, the paternal and maternal grandmothers, who have the same level of relationship to the deceased, (viz., the mother's mother and the father's mother), both share one-sixth of

the *tarikah*. A remoter maternal grandmother also shares one-sixth with a closer paternal grandmother, as in the case of a maternal great-grandmother (a mother's mother's mother) and the father's mother. However, the closer maternal grandmother blocks the remoter paternal grandmother. Thus, a maternal grandmother, (a mother's mother), blocks the paternal great-grandmother (father's father's mother).

Distributing the *Tarikah* to the Heirs

CLASSIFICATION OF THE HEIRS

In terms of the shares received by the heirs, as prescribed in the Qur'ān and fixed by the Prophet, or in a very few cases decided upon by the Prophet's Companions after careful and deep consideration, the heirs consist of two categories: those with fixed shares and those without fixed shares. In some cases, certain relatives might have a fixed share in some circumstances but not in others. Such relatives receive a "general" share. Some circumstances may also lead to the reduction of a fixed share. Those who have no fixed share are called *'aṣabah* (those who are strongly tied together [by a blood relationship]).

The Fixed Shares (*Furūḍ*)

A fixed share is a *farḍ*, defined as the measured portion of the *tarikah* due to an heir as fixed by the Sharī'ah. Those with no fixed shares are called *'aṣabah,* a term designating relatives connected to each other by an agnatic bond. The *furūḍ* are six categories:

I. One-half of the *tarikah*. This share is given to each of the following heirs, under certain circumstances:

1-*the husband of a woman who died without offspring* (if she is survived by her own child, whether from this

husband or another, her husband's share is reduced to one-fourth);

2-*the daughter*, if there is no surviving son or other daughter;

3-*the son's daughter*, if there is no surviving son, daughter, the son's son, or other son's daughter (a son's daughter);

4-*the full sister*, if there is no surviving brother or another sister, no surviving son or daughter, and no surviving father (who blocks all brothers or sisters or a mixture of both), and if there is no surviving father's father who makes the sister an *'aṣabah*; and

5-*the paternal sister*, subject to the above conditions, if there is no surviving full sister.

II. One-fourth of the *tarikah*. This share is given to two categories:

1-*the husband*, when his wife dies and leaves behind her own child or children, whether they are from this husband, another husband, or an adulterous liaison; and

2-*the wife or wives* (up to four), if the deceased husband has no offspring who can inherit. A daughter's son and a daughter's daughter have no effect here, for they cannot inherit.

III. One-eighth of the *tarikah*. This share is due to one category: *the surviving wife or wives*, if the deceased husband left behind offspring who can inherit, such as a son, a daughter, a son's son, or a son's daughter.

IV. Two-thirds of the *tarikah*. This share is due to four categories:

1-*two or more daughters*, if the deceased left behind no son(s). A surviving son would change their status as heirs

of a fixed share into that of *'aṣabah* (heirs entitled to a general [unfixed] share);

2-*two or more son's daughters* (son's daughters), if the deceased left behind no child of his or her own and there is no surviving paternal grandson (son's son). A paternal grandson transforms their status into that of *'aṣabah*;

3-*two or more full sisters*, if there is no surviving father, father's father, son(s), son's son, daughter, a son's daughter, or a full brother; and

4-*two or more paternal sisters*, if there is no surviving father, a father's father, a full or a paternal brother, or daughter(s). Moreover, two paternal sisters do not receive two-thirds of the inheritance if a full sister is still alive. The presence of a maternal brother, however, does not cause any change.

V. One-third of the *tarikah.* This share is due to two categories:

1-*The mother* of the deceased receives one-third of the *tarikah*, provided there is no surviving son(s) or daughter(s); and the absence of a son's son or a son's daughter; and the absence of two or more full paternal, maternal, or mixed brothers or sisters, whether or not they actually inherit (if this is the case, she receives one-sixth of the *tarikah*);

2-*two or more maternal or mixed brothers or sisters*, who are entitled to an equal portion of the one-third share. In addition, the maternal sister's share should equal that of her brother.

Notes:

The maternal brothers and sisters have the following unique features: *the male is not favored over the female*; *the share is divided equally*, regardless of gender. When two or

more heirs of them are involved, *they inherit even if their mother is still alive*, although they are related to the deceased through her. Usually, this situation would cause the heir to be blocked, as in the case of the surviving father, who blocks the grandfather, the brothers, and the sisters. *The presence of the maternal sibling reduces their mother's share from one-third to one-sixth*, even when they are blocked by a specific factor; and *the male of the maternal sibling inherits*, although he is related to the deceased through a female, the mother, and even in her presence. This is not typical, as the maternal father's father (a mother's father), for example, who is related to the deceased through the mother does not inherit.

VI. One-sixth of the *tarikah*. This is given to seven categories:

1-*the father*, if the deceased has a son, a daughter, or any descendant through the paternal (agnatic) line;

2-*the mother*, if the deceased has a son, a daughter, or any descendant through the paternal (agnatic) line. The mother also receives one-sixth if there are two surviving full or paternal or maternal brothers or sisters, whether or not they actually inherit;

3-*the father's father*, in some cases, as will be explained later;

4-*a son's daughter*, if there is a surviving daughter under certain conditions. The son's daughter receives one-sixth in the presence of the daughter, which makes a total of two-thirds;

5-*the paternal sister*, if there is a surviving full sister. When added to the share of the full sister, the total is two-thirds;

6-*the maternal brother or sister*; and

7-the mother's mother, the father's mother or both when both inherit, sharing one-sixth.

The two or more surviving grandmothers, if they are on the same level of relationship, receive one-sixth of the *tarikah*. Otherwise, the nearer grandmother blocks the further grandmother. The father and father's father block only those grandmothers who are related to the deceased through them. Thus they do not block the maternal great-grandmother (a mother's mother's mother). The father's mother's mother, and the father's father's mother are blocked by the mother's mother, but the mother's mother's mother is not blocked by the father's mother owing to the greater strength of the motherly nurture on the mother's side. Furthermore, the father's mother's mother does not inherit, as she is related to the deceased person through a female relative, namely, the father's mother.

If the deceased is survived by his or her father, and the father's mother, and the mother's mother, the mother's mother receives one-sixth and the balance goes to the father (who blocks his mother). According to the Ḥanbalī school, this one-sixth share is to be divided equally between the two grandmothers, as the father, according to them, does not block his own mother, (he does, however, block his own father). The mother's mother blocks the father's mother's mother and the father's father's mother. The mother's mother and the father's mother share one-sixth. Neither blocks the other, for they are equally related to the deceased through the one medium.

This also applies to the mother's mother's mother and the father's mother's mother. The nearer maternal grandmother blocks the more distant paternal grandmother, but the nearer paternal grandmother does not block the more distant maternal grandmother.

Thus, the grandmothers are placed into three categories:

1-*a grandmother related to the deceased through females only*. This includes the mother's mother, the mother's mother's mother, and so on;

2-*a grandmother related to the deceased through males only*. This includes the father's mother, the father's father's mother, and so on; and

3-*a grandmother related to the deceased through an ascending male and females*. This includes such people as the father's mother's mother and the father's father's mother's mother. These are called the true grandmothers, and they have a right to inherit according to the Ḥanafī and the Shāfiʿī schools.

Grandmothers who cannot inherit are those related to the deceased through females and a male in the middle such as:

- the mother's father's mother, and
- the mother's mother's father's mother.

As a result, only one grandmother related to the deceased through his or her mother can inherit. This is because when there is a number of grandmothers through the mother, the nearer one blocks the remoter one, and in the case of the existence of a male in the middle, she does not inherit.

A Summary of Heirs with Fixed Shares

A. Male heirs:

1. **The Husband.** He receives one-half of his deceased wife's *tarikah*, unless she has a child or other inheriting offspring. In that case, he receives only one-fourth of the *tarikah*.

2. **The Father.** He receives one-sixth of the *tarikah* if the deceased has a son, a daughter, or a lower agnatic de-

scendant. Otherwise, he receives the full *tarikah* or what is left of it after calculating the shares of those with fixed shares.

3. **The Grandfather.** He has the better chance of sharing or receiving one-third when there is no father, male children, or heir entitled to a fixed share. His case with siblings will be considered in a separate chapter.

4. **The Maternal Brother.** He receives one-sixth or shares in one-third with his brothers and sisters.

B. Female heirs:

1. **The Wife.** She receives one-fourth of her deceased husband's *tarikah* if he dies with no agnatic heir. Otherwise, she receives one-eighth.

2. **The Mother.** She receives one-third if there are no children and no surviving two or more brothers or sisters (or a mixture of brothers and sisters).

3. **The Daughter.** She receives one-half if there is no surviving son or other daughters.

4. **The** Son's Daughter. She receives one-half if there is no surviving son or other daughter(s). If there are two daughters, the son's daughter is blocked, unless there is a son's son who can transform her status from an heir entitled to a fixed share to that of an *'aṣabah.*

5. **The Grandmother** (*Al-Jaddah*). She receives one-sixth if there is no surviving mother and no surviving father (in the case of the father's mother). The father blocks his own mother and his father's mother, but not the mother's mother or the mother's mother's mother. (*Al Jaddah* who is the mother's mother, or the mother's mother's mother, or the father's mother or the father's mother's mother, her inheritance is undisputed. There is a dispute as to whether the father's father's mother should inherit.

Should there be the father's mother and the father's father's mother, the first inherits but not the other one.)

6. **The Full Sister** (*Al Ukht Al Shaqīqah*). She receives one-half of the *tarikah* if there is no surviving father, nor a son, nor a son's son, nor a son's daughter; if there is no father nor a father's father; and if there is no full brother nor another full sister. She is blocked by the first three categories, father, son, son's son, and shares with the father's father according to the Shāfi'ī school. However, according to Imām Abū Ḥanīfah, she, like other siblings, is blocked by a father's father.

7. **The Paternal Sister** (*Al Ukht li Ab*). She receives one-half if there is no surviving son, no son's son, no a son's daughter, no father, no father's father, and no full sister. However, an agnatic sister accompanied by a father's father receives a fixed share only in certain cases, which will be explained later.

Let's first deal with the less well-known case of a woman who dies leaving behind her sister, her father's father, her husband, and her mother. The more famous case, known as *al Akdarīyyah* (a term derived from the root KDR, "to upset or cause grief." [It upset Zayd Ibn Thābit]), will be dealt with soon. The case at hand consists of the husband (who receives one-half), the mother (who receives one-third), an agnatic sister (who receives one-half), and the father's father (who receives one-sixth). The total is nine-sixths, and thus the case is inflated to nine. We will deal with this issue of inflation in due course.

8. **Al-Ukht li Umm, "The Maternal Sister."** She receives one-sixth if there are no other surviving heirs, and shares in one-third if there is a surviving maternal brother or sister.

Summary of the Parent's Inheritance

The mother of the deceased persons has seven situations:

1-When there is no offspring from the deceased person and no sibling: She then gets 1/3 of the *tarikah* unanimously.

2-When there is only one brother or one sister of the deceased: She gets also 1/3 with no dispute.

3-When there are three siblings, she gets 1/6 also unanimously.

4-When there are two siblings: She gets 1/6 according to the majority of the jurists but 1/3 according to 'Abd Allāh Ibn 'Abbās who takes the plural word, *ikhwah*, in IV, II to mean 3 or more.

5-When there is an offspring, she gets 1/6 unanimously.

6-In the renowned case of mother, father and husband she gets 1/3 of the balance after the husband takes his share according to the majority of the jurists, but 1/3 of the *tarikah* according to Ibn 'Abbās.

7-And similarly, she gets 1/3 of the balance after the wife takes her share in the case of a wife, father and mother, according to the majority opinion.

As for the father, he has three possibilities:

i-To get the total of the *tarikah* or the total of the balance remaining after those with fixed shares have taken their dues – and that happens when there is no offspring.

ii-To receive 1/6 of the *tarikah* when the deceased has left a male offspring.

iii-To get 1/6 of the *tarikah*, plus the balance when the deceased has left one or more daughters.

In the case of father's father and a sister, each gets 1/2 of the *tarikah*. The father's father does not convert the sister into *'aṣabah*, as she does not need this conversion in this case.

Heirs who have no fixed shares are called *'aṣabah*. If there is only one such heir, he or she receives the entire *tarikah* if there is no heir with a fixed share. Otherwise, he or she takes the balance or shares it with other *'aṣabah*.

Al 'Aṣabah (Heirs with no fixed shares)

The term *'aṣabah* is the plural of *'āsib*, "an heir related to the deceased person through the agnatic (paternal) line." Imām al Nawawī defines it as "every male heir who is not separated from the deceased by a female relative." They are primarily the son, the father, and those related to the deceased through them. Another important term is *farḍ*, "a fixed share of the *tarikah* assigned to one or more of the heirs." Such heirs are called *aṣḥāb al furūḍ;* but those who have no fixed share are called *'aṣabah*.

When there is only one surviving *'aṣabah*, he or she may receive the entire *tarikah* or its remainder (if there is one) after those with fixed shares have received their shares. All *'aṣabah* are related to the deceased through the agnatic line. On the other hand, most *'aṣabah* receive nothing if those with fixed shares inherit the entire *tarikah*. When there are two or more *'aṣabah*, the nearer one blocks the further. Suppose someone died leaving a son, a son's son, brothers, and sisters. The son blocks all of them. When there is a father and a father's father, the father blocks the grandfather.

Those relatives who are members of the *'aṣabah* category are:

1. **The Father**. If the deceased has a son or a daughter, the father receives one-sixth of the *tarikah*. Otherwise, the father receives the full *tarikah* or the portion left after those with fixed shares have taken their shares. Thus, if someone is survived by only his or her father, the father inherits everything. If the deceased leaves behind a son(s) or a daughter(s), the father only receives one-sixth.

Let's look at the following cases. For example, a person dies and leaves behind:

His or her father and one son. The father receives one-sixth of the *tarikah*. As each share must be a sound (unbroken) figure, the *tarikah* is divided into 6 shares (6 is the denominator of one-sixth). The father receives 1 share (one-sixth), and the son receives the remaining 5 (five times the father's share).

His or her father and one daughter. If there is a daughter, who is entitled to a one-half share, the father receives a one-sixth share. Since the minimum multiple of 2 and 6 (the denominators of the fractions representing the shares) is 6, the *tarikah* is divided into 6 portions. The daughter takes 3 and the father takes 1, a total of 4 shares. The balance is divided between them proportionally. Since the father receives a one-sixth share, and the daughter receives a three-sixths share, there is a balance of 2 shares. These 2 shares must be apportioned at the rate of 1 to 3, which gives a total of 4 shares. Thus the father receives one-fourth of the remaining 2 shares, and the daughter receives three-quarters.

His or her father and two or more daughters. The two daughters' share is two-thirds of the *tarikah*, and the father's share is one-sixth. As the minimum multiple of 3 and 6 (the denominators of the fractions representing the shares) is 6,

the *tarikah* is divided into 6 shares. The daughters receive 4, and the father receives 1 share. The remaining share is distributed between them proportionally, based upon their shares.

2. The Son. He inherits everything if there is no other heir, and all of the remainder if there are heirs entitled to specific fixed shares.

3. The Son's Son (Ibn al Ibn). If there is no son, the son's son is treated like the son.

4. The Full Brother (al-Akh al-Shaqīq). If the deceased left behind no father, father's father, child, or the son's son, the full brother inherits everything. If there are surviving heirs entitled to a fixed share, the full brother receives everything left over after their shares have been deducted. The case of a brother(s) with the father's father will be dealt with later.

5. The Paternal Brother (al-Akh li-Ab). If there is no surviving full brother, the paternal brother is treated as a full brother.

6. The Son of a Full Brother (Ibn al Akh al Shaqīq). If there is no surviving full brother or paternal brother(s), the son of a full brother inherits.

7. The Son of a Paternal Brother (Ibn al-Akh li Ab). If there is no son of a full brother, the son of a paternal brother inherits.

8. The Father's Full Brother (al 'Amm al Shaqīq). If there is no full brother, paternal brother, or son belonging to either of them, the father's full brother inherits.

9. The Paternal Brother (al 'Amm li Ab). If there is no surviving full brother of the father, the father's brother inherits.

10. The Son of the Father's Full Brother (Ibn al-'Amm al-Shaqīq). If there is no surviving full brother of

the father or paternal uncle, the son of the father's full brother inherits.

11. The Son of a Paternal Uncle (Ibn al 'Amm li Ab). If there is no surviving son of the father's full brother, the son of the father's brother inherits.

12. The Freeing Slavemaster or Slavemistress. They used to inherit from their former slaves in the past.

In some cases, an *'aṣabah* may be entitled to a fixed share, such as a father who, if there is a surviving child of the deceased, receives a fixed share of one-sixth. Moreover, an *'aṣabah* who is nearer to the deceased blocks the one who is after him. Thus a father blocks a father's father, a mother blocks a grandmother, a full brother blocks a paternal brother, and a full uncle blocks all paternal uncles and their sons. Similarly, a paternal brother blocks an uncle and his uncle's son, a full uncle blocks the father's brother, the father's brother blocks a full uncle's son, and a full uncle's son blocks the father's brother's son.

Notes:

1. A nearer inheriting relative blocks the one who comes after him or her. Thus the father blocks the father's father, the mother blocks the mother's mother, the son blocks the son's son and the son's daughter, a full brother blocks a paternal brother, and so forth. An heir is deprived by the presence of the relative through whom he or she is related to the deceased. The only exception is the maternal brother or sister, who may inherit with the surviving mother through whom the maternal sibling is related to the deceased.

2. The son, the son's son, the full brother, and the paternal brother, each of these heirs causes his sister to lose her status as a fixed-share heir. These survivors cause the

sister to become an *'asabah*, which entitles the male to receive twice as much as the female. Furthermore, the son's daughter becomes an *'asabah* if there is a surviving son's son or a lower-level son's son's son. An exception is made if she is entitled to a one-half share on her own, or to a one-sixth share to complete a total of two-thirds, or sharing in a two-thirds share. Moreover, the full sister and the paternal sister are reduced to *'asabah* status if there is a surviving father's father.

3. One or more full sisters, or a paternal sister(s), lose their fixed-share status if there is one or more surviving daughter. The full sister then, like the full brother, blocks the paternal brothers and the paternal sisters.

4. The full brother's son and the paternal brother's son, each one of them is to be treated like his father. However, they do not reduce the mother's share from one-third to one-sixth. They also do not make their sisters *'asabah*, because their sisters are not heirs. They, in turn, are blocked by the father's father. The full brother's son does not share with the maternal brother or sister, and he is blocked by the father's full brother and by the full and paternal sisters when they become *'asabah*.

Let's consider some cases for the purpose of illustration:

A wife died leaving behind her husband, her mother, and her father. The husband receives one-half of the *tarikah*. The mother is supposed to receive one-third, as there is no surviving child and no two or more surviving brothers or sisters. The father should receive the balance of the *tarikah*. As the minimum common denominator of 2 and 3 is 6, we divide the *tarikah* into 6 shares. The husband receives 3, the mother receives 2, and the father receives the balance. In this case, the balance is 1 share, or one-sixth of the

tarikah. Thus the mother receives twice the share of the father. This is the view of 'Abd Allāh Ibn 'Abbās, who followed the exact meaning of the Qur'ān 4:9.

Yet when this case was brought before Caliph 'Umar, he stated that the mother should not receive more than the father. He therefore gave the mother one-third of the balance after the husband's share had been deducted. Let's assume that the *tarikah* has 6 shares. The husband receives 3. The mother, according to Caliph 'Umar's decision, received 1 share, which is one-third of the remainder after the husband's share had been removed. The father was granted the balance of 2 shares. Caliph 'Umar also did this when a husband died leaving behind his wife and his parents. Thus while Caliph 'Umar ingeniously used the term *thulūth,* (one-third) to convey the same meaning, he applied it to the balance and not the entire *tarikah.* These two cases came to be known as *al 'Umarīyyatān,* the dual form of *al 'Umarīyyah,* an attribution of the name 'Umar. They are also called *al Gharrawatān* (The Brightly-Shining Two Cases).

Most of the Prophet's Companions and famous scholars, including Imām Abū Ḥanīfah, Imām Mālik, Imām al Shāfi'ī, and Imām Ibn Ḥanbal, endorsed this ruling. Yet despite our deep love and great admiration for Caliph 'Umar, we feel more inclined toward the view of Imām 'Abd Allāh Ibn 'Abbās. There is nothing objectionable if the mother receives a greater share than the father from the *tarikah* of her deceased son or daughter. This is more in agreement with the letter of the Qur'ānic text, and is also more congruous with Qur'ān's greater emphasis on the mother's right (refer to 31:14-15 and 56:15).

Also when the Messenger of Allah was asked: "Who deserves my utmost devotion?," the Prophet said, "Your

mother." After asking this question a total of three times and receiving the same answer each time, the person asked the Prophet yet another time. This time, the Prophet said, "Your father." The ruling of Ibn 'Abbās in this case agrees more with this spirit.

The supporters of Caliph 'Umar's views in these two cases argue that when the parents are the only heirs, the mother receives one-third and the father receives the balance, which amounts to two-thirds. From this, they deduce that the mother's share should be half of the father's, or at least that her share should not be larger than his. However, Caliph 'Umar did not extend his view to the case in which the deceased leaves behind a spouse, a father's father, and his or her mother. In this case, he allowed the mother to receive a one-third share, and he gave the balance to the father's father.

5. The survival of a male heir may change the status of the female from a fixed-share heir to an 'aṣabah. A surviving daughter, on her own, as we recall, receives one-half of the tarikah. If there is a surviving son, whether or not he is her full or paternal brother, both relatives receive either the full tarikah, if there is no other fixed-share heir, or the balance remaining after the fixed shares have been deducted.

The son is entitled to twice as much as the daughter. If there are more daughters, they also share with the son(s) and receive half of what the sons receive. This also holds true for grandsons and granddaughters, full brothers and full sisters, and paternal brothers and paternal sisters. Moreover, the status of the son's daughter changes from a fixed-share heir, even with the presence of son's son's son, and even by a lower one in the agnatic line, unless there is one or more son's daughter who share with her in the fixed share of two-thirds.

The status of the full sister and the paternal sister also changes if there is a surviving father's father. Let's illustrate by some examples:

1. A person dies leaving behind daughters and sons. Let's first start with the case of 1 son and 1 daughter. Instead of giving 1 share to the son and a one-half share to the daughter (making a total of 1.5 shares), we divide the *tarikah* into 3 sound shares by adding 1 and 2, the denominators of the fractions representing the shares (1 for the daughter and 2 for the son). In the case of 1 son and 2 daughters, we multiply the number of the sons (1x2), add the result to the number of daughters (1), and then distribute the *tarikah* accordingly. In this case, the *tarikah* consists of 4 shares: the son takes 2 and each daughter takes 1 share. In the case of 2 sons and 1 daughter, the *tarikah* is divided into 5 shares, because 2x2+1=5. The daughter takes 1, and each son takes 2 shares. In the case of 3 daughters and 2 sons, the *tarikah* is divided into 7 shares, since 7 is the total of 3 (daughters) + 2 (sons) x 2 (each son's share is double that of the daughter).

2. A son's daughter and a son's son, whether the latter is her brother or her cousin. The grandson receives twice as much as the grand-daughter.

3. A full brother and a full sister. The procedure outlined in number 2 is applied here.

4. A paternal sister and a paternal brother. The procedure outlined in number 2 is applied here.

5. A daughter, a son's daughter, and a son's son, whether he is her brother or her cousin. The daughter receives one-half of the *tarikah*, and the balance is shared by the son's daughter and the paternal grandson. The daughter receives 3 shares, the son's son receives 2 shares, and the son's daughter receives 1 share.

6. A son's daughter and a son's son's son or lower. The son's daughter receives one-half, and the boy receives the balance. He cannot change her right to a fixed share, because his relationship to the deceased is on a lower level than hers.

7. A daughter, one or more son's daughter(s), and a son's son's son. The daughter receives one-half and the son's daughter receives one-sixth, making a total of two-thirds. The boy receives the balance. He does not change the fixed-share status of the females above him because he is below their level. The daughter receives 3 shares, the son's daughter(s) receive 1, and the boy receives 2 shares.

8. Two or more son's daughters and a son's son's son. The two son's daughters receive two-thirds, and the boy receives the balance. So the son's daughters receive 2 shares, and the boy receives the remaining 1 share.

9. A daughter, a son's daughter, a son's son's daughter, and a son's son's son's son. The daughter receives one-half and the son's daughter receives one-sixth (making a total of two-thirds), and the son's son's daughter daughter and the boy receive the balance. As usual, the boy receives twice as much as the son's son's daughter. The daughter receives 3 shares, the son's daughter receives 1, and 2 remaining shares are shared by the son's son's daughter and the boy. As 2 is not divisible by 3, and to ensure that the boy's share is twice that of the son's daughter, 3 is multiplied by 6 to obtain 18, which can be divided by both numbers. Thus, the daughter receives 9, the son's daughter receives 3, the son's son's daughter receives 2, and the boy receives 4 shares. The full sister and the paternal sister are treated similarly.

10. A person died leaving behind a father's father, a full
    brother, a paternal brother, and a maternal brother. The
    paternal brother is blocked by the full brother, the ma-
    ternal brother is blocked by the father's father, and the
    tarikah is divided between the father's father and the
    full brother. The full brother counts as the paternal
    brother, because he, like the father's father, is related to
    the deceased through the father. Thus the full brother
    receives two-thirds, his share and that of the paternal
    brother, and the father's father receives one-third. (The
    problem of distributing the *tarikah* when the father's
    father inherits along with the siblings will be treated in
    a special chapter.)

11. Two daughters and a son's daughter. As we have
    learned, a son's daughter is blocked by the two daugh-
    ters. The two daughters receive two-thirds, and then the
    balance is divided proportionately between them.

12. Two daughters, a son's daughter, and a son's son. The
    two daughters receive two-thirds, but the son's daugh-
    ter, who normally would have been dropped because
    the *fard* of two-thirds has been taken by the daughters,
    is saved by the surviving son's son, who converts her
    status from a fixed-share heir into the category of
    'asabah. She then divides the balance with him. This
    male heir is known as "the blessed relative" (*al qarīb
    al mubārak*), as explained above. In fact, a lower son's
    son saves a higher son's daughter.

      Likewise, a descending agnatic grand-daughter is
    saved by an even-lower agnatic grandson, such as a
    son's son's daughter with two son's daughters. The
    same applies to a daughter and a son's daughter; a son's
    son's daughter and a son's daughter, and a son's son's
    daughter and a son's son's son's daughter. The lower
    grand-daughter is blocked, unless there is a grandson to

convert her status into that of an *'aṣabah*. All of this was explained earlier, but we are repeating it for greater clarity and to prevent any confusion.

Notes:

If the sister of the deceased has a brother, her status changes from a fixed-share heir to that of *'aṣabah*. Thus the full sister blocks the paternal brother, the paternal sister, and any other *'aṣabah* who comes next to her. The paternal sister blocks the brother's sons, the full uncle, and his son. Furthermore, a surviving full or paternal brother's son, unlike his father, does not affect the one-third fixed share of the mother, for the Qur'ān limits the reduction of her share from one-third to one-sixth to the situation where there are brothers (aside from offspring). Again, they do not affect the status of their sisters (the brother's daughters) who are not heirs, and they cannot inherit along with the grandfather who, like the brother, blocks the brother's sons.

From the above, we see that there are four categories of heirs:

1. The first category consists of fixed-share heirs: the husband, the wife, the mother, the mother's mother, the father's mother, the maternal brother (a mother's son from a different father), and the maternal sister (a mother's daughter from a different father).

2. The second category consists of the *'aṣabah*, none of whom is ever entitled to a fixed share. When there is only one of them, he or she receives the entire *tarikah*. Otherwise, he or she receives the balance remaining after the fixed shares have been distributed. This group does not include the father and the father's father.

3. The third division consists of those heirs who sometimes inherit fixed shares and, at other times, are treated as *'aṣabah*. They never combine both situations.

Some receive a fixed share of one-half, while others receive a fixed share of two-thirds.

4. The fourth category are heirs who receive a fixed share only sometimes, who become 'aṣabah at other times, and who can be a fixed-share heir and an 'aṣabah in other situations. The father and the father's father are in this group. Each receives one-sixth if there is a son or a daughter, a son's son, or a son's daughter. If there are no such relatives, the father and the father's father are 'aṣabah, and may combine a fixed share and become 'aṣabah when there is a surviving female offspring.

    For example, when a person dies leaving only his or her father, the total tarikah is given to the father. If the deceased also leaves a daughter, the father receives one-sixth as his fixed share, and the daughter receives one-half. If the tarikah is divided into 6 shares, the father receives 1 and the daughter receives 3 shares. Then the remainder is divided proportionately between the father and the daughter, based on the ratio of their shares. If there is no father but there is a father's father, he is treated as the father.

A person may inherit on the basis of two factors: as a fixed-share heir and an 'aṣabah. An example is a paternal nephew (a father's brother's son, ibn al 'amm), who is also a maternal brother of the deceased. He receives one-sixth as a maternal brother, and shares in the balance (if there is one) after the fixed shares have been removed. Another example is a husband who is also a paternal nephew, (a father's brother's son). He inherits his wife as her husband, and also due to his status as a paternal grandson of her father (a father's father's son).

In this conjunction, we have to bear in mind the fact that, according to the Sharī'ah, the cost of maintaining an unmarried girl or woman is the responsibility of her father. In his absence, this becomes her brother's responsibility. The cost of maintaining a married woman and her children is the responsibility of her husband, no matter how rich she might be.

Al Ḥajarīyyah (The case of the stone)

Another interesting case faced by Caliph 'Umar Ibn al-Khaṭṭāb involved a woman who died leaving behind her husband, her mother, full brothers, and maternal brothers. Caliph 'Umar was asked about this case while delivering a sermon, and he ruled that the husband should receive one-half of the *tarikah* (there was no child), the mother should receive one-sixth (there were brothers), and the maternal brothers should receive one-third. The total fixed shares came to 12, thus absorbing the complete *tarikah* and leaving nothing for the full brothers. (Imām Abū Ḥanīfah adopted this ruling.)

Some time later, Caliph 'Umar was faced with an identical case. When he was about to give the same ruling, Zayd Ibn Thābit intervened. In addition, the full brothers protested, because they were related to the deceased through their father and their mother. Thus they were more related to the deceased than the maternal brothers. They argued: "Let's suppose that our father had never existed. Let's suppose he was a *hajar* (stone) thrown into the sea. Can't we at least be treated as maternal brothers?" Caliph 'Umar then ruled that all of the brothers should share the one-third equally, as if they were all maternal brothers. When he was reminded of his earlier ruling, he said: "That was the decision we were inspired with then, and this is our current inspiration."

This latter ruling was adopted by Imām Mālik and Imām al Shāfiʻī. We should add, however, that if there is no surviving mother, the maternal or paternal grandmother (*jaddah*) plays the same role.

On account of the word *ḥajar*, this case became known as *al Ḥajarīyyah*. It is also known by several other names: *al-ʻUmarīyyah*, attributed to the name ʻUmar, because Caliph ʻUmar was involved in it; *al-Mushrikah*, the pattern of the present participle, because it lets the siblings share in the *tarikah*; and *al Mushrakah*, the pattern of the past participle, because the inheritance is shared.

The Father's Father and the Father: A Comparison

The father's father is treated differently from a father in five aspects, as detailed below:

1. The father blocks all siblings, whether full, paternal, or maternal brothers and sisters. The father's father does not do so, according to most jurists, but the maternal brothers and sisters are blocked by the father's father as well.

2. In the case of the husband, the mother, and the father, the mother receives one-third of the balance after the husband has received his one-half share. The father receives the rest. If there is no father but there is a father's father, the mother receives her full one-third, the husband receives his one-half, and the father's father receives the balance. Here the mother receives a greater share, because she is closer to the deceased than the father's father.

3. In the case of a man who dies leaving his wife, his mother, and his father, the wife receives one-fourth, the mother receives one-third of the balance, and the father receives the rest. If there is no father but rather a fa-

ther's father, the mother's share is not reduced to one-third of the balance; rather, she receives her full one-third. The wife receives one-fourth, and the father's father receives the balance.

4. The father blocks his own mother, but the father's father does not.

5. If the deceased leaves behind his or her father and daughter, the father receives a fixed share of one-sixth, the daughter receives one-half, and the father takes the balance due to his status as an *'aṣabah*. This is agreed to unanimously. If there is no father but rather a father's father, it is disputed whether he receives the same share as the father or the total balance as an *'aṣabah*. As a matter of fact, it makes no difference in the case of the father's father, for he receives one-half of the *tarikah* in any case.

Summary:

It is useful to remind ourselves at this stage that the total number of the heirs is twenty-five, of whom fifteen are males and ten are females. They are divided into ten categories:

1. Those who can never be blocked: the husband, wife, father, mother, son, and daughter.

2. Those who can be blocked by a single heir: the son's son, who is blocked by the son; the father's father, who is blocked by the father; and the mother's mother, who is blocked by the mother and by a maternal grandmother closer to the deceased.

3. Those who are blocked by two heirs: the son's son and the son's daughter, who are blocked by the son and a grandson who is closer to the deceased and higher in status; the grandfather, who is blocked by the father and the father's father who is closer to the deceased;

and the grandmother, who is blocked by the mother
and a grandmother who is closer.

4. Those who can be blocked by one of three: the full
    brother and the full sister, who are blocked by the son,
    the son's son, and the father.

5. Those who can be blocked by one of four: the paternal
    grandmother, who is blocked by the father, the mother,
    and a maternal or paternal grandmother closer than she.

6. Those who can be blocked by one of five: the paternal
    brother, who is blocked by the father, the son, the son's
    son, and the full brother, as well as the full sister when
    she is transformed into an *'asabah* by a male heir.

7. An heir who can be blocked by one of six: the paternal
    sister, who is blocked by any of those in clause number
    6, and by two or more full sisters.

8. The maternal brothers. They are blocked by a son, a
    son's son, the father, and the father's father.

9. The son of the full brother, who can be blocked by one
    of eight: the father, the father's father, the son, the son's
    son, a full brother, a paternal brother, a full sister
    whose status has been transformed into an *'asabah*, and
    the paternal sister whose status has also been so
    changed.

10. The son of a full brother, who can be blocked by any of
    those mentioned in paragraph 9 above, and by the son
    of a full brother.

AL-JADD AND *AL-IKHWAH*

The Grandfather and the Siblings

A. VARIOUS VIEWS OVER THIS ISSUE

The Qur'ān and the *Sunnah* do not specify the inheri-
tance of such heirs when they happen to be together either

by themselves or with other heirs. This issue came up during the caliphate of Abū Bakr al-Ṣiddīq. The Caliph ruled that the paternal grandfather, (the father's father), if there is no surviving father, blocks all siblings, be they full, paternal, or maternal brothers and sisters, just like the father. Caliph Abū Bakr was supported by 'Abd Allāh Ibn 'Abbās and some other Companions, and several Ṭābi'ūn jurists, including Imām Abū Ḥanīfah. They argued that just as the paternal grandson, (a son's son), is treated like a son if there is no surviving real son and he thus blocks the other siblings, the father's father, if there is no surviving real father, should likewise block all siblings.

According to Imām Alī Ibn Abū Ṭālib, 'Abd Allāh Ibn Mas'ūd, and Zayd Ibn Thābit (whom the Prophet described as the best authority on inheritance), the paternal grandfather stands in the same position as that of the siblings, namely, the brothers and sisters of the deceased, because they are all related to the deceased through the father. Imām Mālik, Imām al-Shāfi'ī, Imām Ibn Ḥanbal, as well as Imām Abū Yūsuf and Imām Muḥammad Ibn al Ḥasan, (the leading disciples of Imām Abū Ḥanīfah), also hold this view, as do a majority of later Muslim jurists.

Caliph 'Umar, who succeeded Caliph Abū Bakr, felt that the inheritance of the father's father along with the agnatic siblings was a thorny problem. While he was struggling with death, although he worked hard earlier to resolve this issue, he said: "Keep me away from three subjects. I do not wish to make a decision about the inheritance of the father's father (jadd), nor do I wish to give an opinion on the (inheritance) of kalālah (when the deceased is not survived by any offspring or ancestors) or on the issue of the caliphate; (i.e., he who should rule after him.)" Nevertheless, Caliph 'Umar made two major decisions regarding this issue before he was assassinated by Abū Lu'lu'ah. Let's

now begin to study the grandfather's inheritance along with that of the siblings.

According to Imām al Shāfi'ī and many other leading jurists, when the father's father inherits along with brothers or sisters or a mixture of both, his share depends on whether or not there is an heir(s) entitled to fixed shares. Let's start with cases in which there is no fixed-share heir.

B. INHERITANCE OF AL-JADD ACCORDING TO THE MAJORITY OF JURISTS

I. IN CASES OF NO HEIR HAVING A FIXED SHARE

In the absence of fixed-share heirs, the father's father is faced with two alternatives; simple sharing with the full or paternal siblings, or receiving one-third of the entire *tarikah*. Let's explain this further:

1. The number of the cases in which one-third of the *tarikah* is better for the father's father is almost unlimited. Such cases occur when the total number of inheriting siblings is more than double his person, (i.e., three brothers, one brother and three sisters, two brothers and one sister, or five sisters). Sharing reduces him to less than one-third of the *tarikah*. So, he takes one-third.

2. There are five instances in which general sharing (*muqāsamah*) is better for the father's father: when there is one brother with the father's father. Each then receives one-half, which is better than one-third; one sister with the father's father. He receives two-thirds, and the sister receives one-third; two sisters and the father's father. Sharing gives him one-half; three sisters with the father's father. Sharing gives him two-fifths, still more than one-third; and one brother, one sister, and the father's father. Shar-

ing gives him two-fifths. In each case, the total number of shares given to the siblings is below two-thirds. Therefore, sharing gives the father's father more than one-third.

3. There are three cases in which general sharing is the same as one-third: when someone dies leaving two brothers and the father's father. The *tarikah* is divided into 3, 1 for the father's father as a fixed share or as a result of sharing, and the other 2 for the two brothers, each of whom receives one share. Two sisters and one brother along with the father's father. Sharing and a one-third share result in equal amounts, for the father's father who receives one-third in any case. The *tarikah* may be split into 6 shares: 2 for the father's father, 2 for the brother, and one each for the two sisters. The last case is the father's father and four sisters. Here again, sharing and one-third are the same.

Let's have some examples in which the father's father's inheritance, based on simple sharing, is reduced to less than one-third, (although he is nevertheless assured of one-third). Someone dies leaving six brothers and his or her father's father. Sharing gives him one-seventh, which is far below one-third. Similarly, it is the same when the father's father has to share the inheritance with four sisters and two brothers.

Briefly stated, the father's father receives a fixed share of one-third, provided that there are no surviving fixed-share heirs and when sharing gives the siblings more than two-thirds of the *tarikah*. In such cases, sharing reduces the share of the father's father to less than one-third. He therefore receives one-third, and the siblings share the balance among themselves.

C. INHERITANCE OF *AL-JADD* ACCORDING TO THE MAJORITY OF JURISTS IN CASES WHICH INCLUDE HEIRS WITH FIXED SHARES

If there is one or more heir with a fixed share, the father's father is assured a minimum of one-sixth of the *tarikah*. However, he can choose the best of three options: general (simple) sharing in the balance of the *tarikah* after the fixed shares have been deducted, or one-third of the balance, or one-sixth of the entire *tarikah*. (Those who have a fixed share in such cases are the husband or the wife, the mother, or the mother's mother, or the father's mother, the daughter, and a son's daughter.)

Simple sharing is the right of the grandfather whenever the balance remaining after the fixed shares have been distributed is one-half or less than one-half of the *tarikah*, whereas the sibling is only one surviving female or male, two females, or a male and a female, assuring the grandfather that he will receive no less than two-fifths of the balance of the *tarikah*. This is also true in cases where the total number of fixed shares is one-half and the only surviving heir is an agnatic sister. We shall give some examples soon.

a.   The father's father receives one-third of the balance after those with fixed shares have taken their portions when the total number of fixed shares amounts to one-half of the *tarikah* or less, while the number of the inheriting siblings is greater than double of the father's father. Examples:

1. His or her mother, his or her father's father, and 5 full or paternal brothers. (The maternal brothers and maternal sisters are blocked by the father's father.) In this case, the mother receives one-sixth, and the balance is five-sixths. Sharing gives the grandfather five-sixths divided by 6 (5 brothers plus 1, representing the grand-

father), 5 out of 36, which is less than one-sixth. One-third of the balance will give him five-eighteenths. The mother receives 3, and the balance is 15. From this balance, the grandfather receives 5, and the 5 brothers each receive 2 of the remaining 10 shares.

2. His wife, mother, the father's father, and 5 brothers. The wife receives one-fourth, the mother one-sixth, and the balance is seven-twelfths. In this case, the father's father is entitled to one-sixth of the *tarikah*, or one-third of the balance. Using a common denominator of 360, the wife receives 90 (one-fourth) and the mother 60 (one-sixth), making a total of 150 and leaving 210. The father's father receives one-third of this, namely 70, which is greater than one-sixth of the *tarikah*. The brothers receive 28 each.

3. A daughter (or husband), the father's father, and five brothers. The daughter (or husband) receives one-half. In cases involving a one-half share and where there are more than two male siblings, one-third of the balance is still better for the grandfather. Assuming that there are 6 shares in this *tarikah*, the balance after removing the one-half fixed share is 3, and one-third of it (1) is better than sharing 3 shares with 5 brothers, although it is equal to one-sixth. If he shares, he receives only one twenty-fourth. Thus, it is better for the grandfather to receive one-third of the balance.

b) The grandfather receives one-third of the balance, which is equal to one-sixth. And this is when the number of brothers is double that of the father's father, like two brothers (or a brother and two sisters, or four sisters), along with the husband or a daughter. Sharing and receiving one-third of the balance in such a case gives the same result. The husband (or daughter) receives one-half, or 3 shares out of 6. The two brothers

and the grandfather each receives an equal portion of the remaining 3 shares.

c) Sharing is the only choice open to the father's father when the total of fixed shares is one-half or less than one-half of the *tarikah*, whereas the number of inheriting siblings is less than twice the number of the father's father. An example is the husband, a full or paternal brother, and the grandfather. The husband receives one-half (1) share, and the remaining 1 share is divided between the brother and the father's father. As 1 is not divisible by 2 (the original total of shares), it is multiplied by 2 (the number of heirs involved) to obtain a new total of 4. The husband's original 1 share is multiplied by 2. The balance, 2 shares, is then shared by the grandfather and the brother, each of whom receives 1, thereby making a total of 4 shares. Another example is with a wife, a sister, and a father's father. The wife receives one-fourth, leaving three-fourths. The sister receives 1 share, and the grandfather (who has made her an *'aṣabah*) receives 2 shares (double what the sister receives). This case is called *murabba'at al jamā'ah*, derived from the word *arba'ah*, which denotes the number 4.

d) Simple sharing also applies when the total of fixed shares is either one-half or less than one-half of the *tarikah*, and the number of siblings is limited to one male or two females and the same numerical value of the grandfather (namely, one sister, or one brother or two sisters, as in the case just cited above, and as in the case of a wife, an agnatic sister, and the grandfather).

    The wife receives one-fourth of the *tarikah*, and the remaining three-fourths is divided between the grandfather (who receives 2) and the sister (who receives 1). The same also applies whenever there are

heirs entitled to a two-thirds fixed share, as in the case of two daughters, an agnatic sister, and the father's father. The daughters receive two-thirds (12 of 18), the father's father receives 4, and the sister receives 2.

Sharing is also the rule whenever the fixed shares are between one-half and two-thirds and there is only one male, one female, or two females. An example of this is the case of a wife, a daughter, a sister, and the father's father. The wife receives one-eighth and the daughter one-half, for a total of five-eighths. The father's father receives 2 and the sister receives 1 of the remaining 3. If there was a mother instead of a daughter, she would receive one-third, 12 of 36, and the wife would receive one-fourth, 9 of 36. In this case, the grandfather receives 10 of the remaining 15 shares, and the sister receives 5 shares. In the case of a wife, a mother, a father's father, and two agnatic sisters, the wife receives one-fourth (12 of 48) and the mother receives one-sixth (8 of 48), for a total of 20 (12+8=20). The balance is 28 (48-20=28). The grandfather receives 14, and the two sisters each receive 7 shares.

e) The father's father receives only one-sixth in the following cases:

1. When the total of fixed shares is two-thirds or between one-half and two-thirds, whereas the siblings are one male and one female, or three females. For example, if there is a husband, a mother, and one brother and one sister, the husband receives one-half (9/18), the mother receives one-sixth (3/18). The grandfather receives one-sixth which is better for him than one-third of the balance, and the brother receives two-eighteenths and the sister one-eighteenth.

2. The grandfather also receives one-sixth whenever the fixed share amounts to two-thirds and there is one brother.

f) The grandfather receives one-sixth when there is only one-half, or two-thirds of the *tarikah* or something in between, whereas there is more than one male sibling (e.g., two brothers, three sisters, or more). For example, take the case of a husband, a mother, a father's father, and two brothers. The husband receives one-half of the *tarikah* (3 of 6), and the mother receives one-sixth, for a total of two-thirds (4 of 6) of the *tarikah*. The remaining 2 shares cannot be divided by 3, the number of the brothers and the grandfather. Therefore, 3 is multiplied by 6, resulting in 18. The husband receives 9 and the mother receives 3, making a total of 12. The father's father received one-sixth and the remaining one-sixth is shared equally between the two brothers. So the father's father receives one-sixth whenever the prescribed shares are greater than two-thirds and the father's father inherits along with one or more brothers.

g) The father's father should choose between simple sharing with the siblings or receiving one-third of the balance after deducting the fixed shares, whenever the total fixed shares is less than one-half of the *tarikah* and there are two males (e.g., two brothers, one brother and two sisters, or four sisters). An example of this is when there is a mother, two brothers, and the father's father. The mother receives one-sixth (1 of 6), because there are surviving brothers. The balance, 5, is divided among the two brothers and the grandfather. Since 5 is not divisible by 3, 3 must be multiplied by 6 to become 18. The *tarikah* is divided into 18 shares. The mother receives 3, and the remaining 15 are divided equally among the two brothers and the grandfather.

h) Simple sharing and receiving one-sixth are of equal benefit to the father's father in two situations:

1. When the total of the fixed shares is two-thirds of the *tarikah*, and the number of the siblings is of the same value as the father's father. An example of this is a husband, a mother's mother, a father's father, and a brother. The husband receives one-half (3 of 6) and the mother's mother receives one-sixth, for a total of two-thirds. The remaining 2 shares are then shared equally by the father's father and the brother.

2. Whenever the fixed share is two-thirds and there is a surviving brother. An example of this is two daughters, a father's father, and a brother. The daughters receive two-thirds (4 of 6), and the remaining one-third (2 of 6) is divided equally between the brother and the grandfather.

Sharing is the right of the father's father in cases when there is only a two-thirds share and the heirs include a sister as well as the father's father, and in cases which include the shares of one-half and one-fourth, and the father's father shares the inheritance with a sister. An example is a husband, the father's father, the mother's mother, and a full or paternal brother. The husband receives one-half of the *tarikah* and the mother's mother receives one-sixth, for a total of 4 (of 6). Of the remaining 2, the brother takes 1 and the father's father takes 1, either as his prescribed share or as his due from simple sharing.

The father's father also can receive one-sixth or one-third of the balance remaining after the fixed shares have been distributed, if the fixed share is one-half of the *tarikah* and there are more than two male siblings, (i.e., two brothers and one sister, five sisters, or more). For example, in the

case of a husband, three brothers, and the father's father, the husband receives one-half, and the remaining one-half is divided among the father's father and the three brothers. We multiply 2 (the denominator of one-half) by 4 (the number of men), and get 8. The husband receives 4, and the grandfather and each brother receives 1 share. But if we divide the remaining one-half equally among the three brothers and the father's father, they each receive one-eighth. Thus it is better for the father's father to receive one-sixth and the remainder, six-eighteenths, is shared equally among the three brothers. Six-eighteenths, (one-third), is better than one-eighth.

i)   These three choices are equally open to the father's father if the fixed shares represent only one-half while the number of siblings is double that of the father's father. That is, two brothers, one brother and two sisters, or three sisters. An example is a husband, two brothers, and the father's father. The husband receives one-half, and the three men divide the other one-half. Multiplying 2 by 3 to get 6, the husband receives 3, each brother receives 1, and the grandfather receives 1 share, (either as his one-third of the balance after the husband has taken his share, or as a result of sharing the balance of 3 shares with the two brothers, or as a one-sixth share of the entire *tarikah*.

j)   One-sixth is also the fixed share of the father's father whenever the balance remaining after the fixed shares have been distributed is one-sixth or less. If the balance is less than one-sixth, the total number of shares has to be inflated, which causes a proportionate reduction in the actual value of the other shares. Take the case of two daughters, the mother, the father's father, and a brother. The daughters receive two-thirds (4 of 6) and the mother receives one-sixth, a total of five-sixths. The remaining balance, one-sixth, goes to the grandfather. The brother receives nothing.

In the case of the husband, two daughters, the father's father, and a brother, the total number of fixed shares is $1/4+2/3=11/12$. The balance is one-twelfth, which is less than one-sixth. However, the total is increased to 13 $(3+8+2=13)$. The father's father receives 2 of the 13 shares. In both cases, the brother(s) receive nothing. (An exception is the agnatic sister in the case of *al-Akdarīyyah,* which will be treated later.)

All of the above rulings apply only when there is a balance amounting to more than one-sixth of the *tarikah.* If, after distributing the fixed shares, the balance is one-sixth or less, the siblings inherit nothing and the father's father receives the remaining one-sixth. Otherwise, the total is inflated to provide his share. The only exception is the share of the full or paternal sister in the case of *al-Akdarīyyah.*

Notes:

In cases that include siblings and the father's father, members of Muslim communities in the West may follow the method adopted by Caliph Abū Bakr and Imām Abū Ḥanīfah. This method deprives the siblings from receiving any shares owing to their being blocked by the father's father. Or, they may prefer to follow the views of Imām Alī, Zayd Ibn Thābit, and the majority of jurists who let the brothers and sisters share the *tarikah* in the manner explained above.

Let's now have some more exercises:

1. A woman died leaving behind her husband and one or more sons. The husband receives one-fourth of the *tarikah,* as there is a surviving son(s). The son or the son's son is entitled to the balance, which amounts to three-quarters of the *tarikah.*
2. A person died leaving a daughter, a son's daughter, and a full or paternal sister. The daughter receives one-half

of the *tarikah* and the son's daughter receives one-sixth, which makes a total of two-thirds. The sister, now an *'aṣabah* due to the presence of the daughter and the son's daughter, receives the balance. Let's recall the rule according to which the sister becomes an *'aṣabah*: when there is more than one daughter and when there is one daughter and a son's daughter. She may acquire this status in some cases when she is accompanied by the father's father.

3. Someone died leaving his or her father, her father's mother, and the mother's mother. The father blocks his own mother. The mother's mother receives one-sixth, and the balance is taken by the father. According to the school of Imām Ibn Ḥanbal, however, the mother's mother and the father's mother share the one-sixth portion in this case, and the father does not block his mother.

4. The father's father, a full or paternal sister of the deceased, and a maternal brother. This case includes the father's father, a sibling, and no heir entitled to a fixed share. Thus, the father's father receives the better choice: either simple sharing or one-third of the total *tarikah*.

    In this case, however, the maternal brother is blocked by the father's father. All jurists agree on this ruling. Moreover, according to Caliph Abū Bakr, 'Abd Allāh Ibn 'Abbās, and some other Companions, the full and paternal brothers are blocked by the father's father. Several later jurists, including Imām Abū Ḥanīfah, hold this same view.

    However, Imām 'Alī, 'Abd Allāh Ibn Mas'ūd, and Zayd Ibn Thābit (who was praised by the Messenger of Allah as the best authority on inheritance) held that the father's father does not block the full or paternal brother; rather, he shares with the full brothers and sis-

ters, and, in their absence, with the paternal brothers and sisters. Like the father's father, they argued, the full and paternal brothers and sisters are related to the deceased person through the father, and therefore neither should block the other. This opinion was held by the majority of later jurists, including Imām Mālik, Imām al Shāfi'ī, and Imām Ibn Ḥanbal. Even the leading disciples of Imām Abū Ḥanīfah; (i.e., Imām Abū Yūsuf and Imām Muḥammad Ibn al-Ḥasan) shared this view.

In this case, the full or paternal sister of the deceased cannot be made an *'aṣabah* by the father's father, as she does not need this transformation. She shares with him, and receives half the *tarikah*. So if the inheritance was $9,000, the sister of the deceased would receive $4,500 and the father's father would receive $4,500.

5. The mother, father's father, and a full sister. This case involves the father's father, a sibling, and a fixed-share heir. The father's father receives the best of three choices: sharing the balance with the siblings after deducting the fixed shares, receiving one-third of the balance, or receiving one-sixth of the total *tarikah*.

The rule is that if the total number of fixed shares is one-half of the *tarikah* or less and the total number of the siblings is less than double his number, (i.e., one agnatic sister, one brother, one brother and one sister, or three sisters), then sharing is better for the father's father. If they are more than double his number; (i.e., two brothers and one sister, one brother and three sisters, or five sisters), then one-third of the balance is better for him. If their number is double his number (i.e., two brothers, one brother and two sisters, or four sisters), the three choices are of equal value.

The mother in the above case receives one-third, and the father's father and the full sister share the bal-

ance. The paternal grandfather receives double the sister's share, and the total amounts to two-thirds. The two denominators (both 3) are multiplied by each other, making a total of 9. The mother receives 3, and the balance of 6 is divided between the sister (who receives 2) and the father's father (who receives 4). This case is called *al-kharqā'*. This method of distribution was devised by Zayd Ibn Thābit and was adopted by Imām Mālik, Imām al Shāfi'ī, and Imām Ibn Ḥanbal. But Caliph Abū Bakr, whose ruling was adopted by Imām Abū Ḥanīfah, blocked the sister as he considered her, like all siblings, blocked by the father's father, just as she is blocked by the father of the deceased.

6. The wife, a mother, the father's father, and an agnatic sister. The wife receives one-fourth and the mother receives one-third, which make a total of seven-twelfths. Thus, a balance of five-twelfths is left to be shared by the sister and the grandfather. This case can be distributed in non-fractionated total of 36. The wife receives 9 shares and the mother receives 12 (9+12=21). This leaves a balance of 15 (36-21=15), of which the father's father (*jadd*) receives 10 and the sister receives 5.

7. The wife, the father's father, a full brother, and a paternal brother. The paternal brother is blocked by the full brother. The wife receives one-fourth and the remaining 3 are shared by the full brother and the grandfather. The full brother, who blocks the paternal brother, claims the share of the half brother he has blocked, as well as his own share. Therefore, he receives 2 shares and the grandfather receives 1 share from the balance. This type of claim by the full brother is called *al mu'āddah*, perhaps derived from the root *'udwān* (transgression); or *'adad* (number), because of counting the blocked brother.

8. The father's father, two full sisters, and a paternal
   brother. The two full sisters receive two-thirds and the
   grandfather receives one-third. As a result, nothing re-
   mains for the paternal brother.[18]

9. The father's father and a full sister. The full sister takes
   one-half (her prescribed share), and the father's father
   receives the other one-half. As the sister does not need
   the grandfather's assistance to make her an *'aṣabah*,
   she is treated on her own merit.

10. The wife, the father's father, a full sister, and 2 paternal
    brothers. The wife receives one-fourth, the father's fa-
    ther receives one-third of the balance: $(1/3 \times 3/4 = 3/12 = 1/4 = 1)$, and the full sister receives one-half (2) or
    1 share, in addition to another 1 share that would have
    gone to the paternal sisters. The full sister was able to
    block the paternal sisters, for she became an *'aṣabah*
    through sharing with the grandfather.

11. The father's father, a full sister, an agnatic brother.
    Sharing is better for the father's father, as he receives
    two-fifths. The shares total 2.5 male shares or 5 sound
    female shares. As a male heir, the father's father re-
    ceives 2 shares, and the sister and the agnatic brother
    share the remaining 3 shares. She receives one-third of
    this balance, which amounts to one-fifth $(1/3 \times 3/5 = 3/15 = 1/5)$, and the half brother receives two-fifths. The
    sister then deducts a fraction from her brother's share
    to complete the one-half share to which she is entitled.
    Thus, she receives from the paternal brother a share of
    $1/2 - 1/5 = 3/10$. The paternal brother gives her $1/2 - 1/5 = 3/10$ of the *tarikah*. He ends up with one-tenth of the

---

[18] Or: they are all to be regarded as *'aṣabah*. The *jadd* gets one por-
tion of 3, the two sisters get one portion together, and the paternal
brother gets the balance, one-third. Then the full sisters block the
half brother and take his share. It will amount to the same thing.

tarikah, whereas the grandfather receives two-fifths and the sister receives one-half.

12. The father's father, a full sister, and two paternal sisters. This case resembles the case discussed above. By simple sharing, the grandfather receives two-fifths and the full sister receives one-half, for a total of 4/10+5/10=9/10. The two paternal sisters receive the remaining one-tenth. To give each heir a sound share, the total is inflated to 20 shares (2x10=20). The father's father receives 8, the full sister receives 10, and the two paternal sisters share the remaining 2 shares equally.

AL-AKDARĪYYAH

13. *Al-Akdarīyyah* is: A mother, a husband, a full or a paternal sister, and the father's father. The mother receives one-third, the husband receives one-half, the sister receives one-half, and the grandfather receives one-sixth. One-sixth is better for the father's father, because the other alternatives, (i.e., one-third of the balance and simple sharing) reduce his share to less than one-sixth. This, however, makes a total of 6, which means that nothing remains for the agnatic sister. Imām Abū Ḥanīfah ruled as such in this case, which has become known as *al-Akdarīyyah*, derived from the root KDR (grief and or disappointment), as it caused much grief to Zayd Ibn Thābit. The decision made by Zayd was adopted by Imām Mālik and his eminent disciple, Imām al-Shāfiʿī.

They also held that this case has to sustain the increase (*ʿawl*) in which the total is inflated while the actual value of each share is decreased proportionately. The total figure is increased to 9. The mother receives 2 (originally the total was 6), the husband re-

ceives 3, the father's father receives 1, and the sister receives 3 shares. However, the jurists hold that the sister should not receive more than the father's father. As his presence transforms her into an *'asabah*, the rule of simple sharing must be used. Her share is added to his share, and the resulting total is divided between the two. The father's father therefore receives twice as much as the sister.

In order to ensure a sound number of shares for each heir, 3 is multiplied by 9 to obtain a total of 27 shares. Of this inflated total, 6 are given to the mother, 9 are taken by the husband, and the remaining 12 are divided between the grandfather (who receives 8) and the sister (who receives 4). Let's recall here that Imām Abū Ḥanīfah ruled that the presence of the father's father blocks the sister.

14. A full sister and the father's father. There is no need to transform the status of the sister into an *'asabah*. Thus the grandfather shares the *tarikah* equally with the sister, each one of them receiving one-half of it.

15. A wife, a mother, a full or a paternal sister, and the father's father. The wife receives one-fourth of the *tarikah* and the mother receives one-third, making a total of 7 of 12. There are 5 shares left. According to the majority of the jurists, this balance is divided between the sister and the grandfather on the basis of 2 to 1, (2+1=3). Since 2 is not divisible by 3, 3 is multiplied by 12 to obtain a total of 36. The wife takes 9 and the mother receives 12, for a total of 21 shares. The balance of 15 is shared by the sister (who receives 5) and the father's father (who receives 10 shares).

Note: Although the father's father blocks the maternal siblings, and the full brother blocks the paternal brothers, these blocked siblings must be taken into ac-

count when the inheritance due to the father's father, along with the siblings, is under consideration.

16. A father's father, a full brother, and a paternal brother. Simple sharing and receiving one-third are, in this case, of equal value to the father's father, who receives one-third. The full brother receives one-third plus the one-third that would have gone to his paternal brother (who he has blocked).

17. A wife, a full brother, a paternal brother, and the father's father. The wife takes one-fourth, and the full and paternal brothers and the father's father share the remaining 3 shares. The full brother receives his half-brother's share (1), as the former blocks the latter. This is an example of *al muʻāddah*, as the grandfather receives the same amount whether he shares the balance after the wife has taken her portion, or takes one-third of it.

18. Two full sisters, the father's father, and a paternal brother. They all will be regarded as *'aṣabah*, and share the *tarikah*, the male double the female.

19. A husband, a full sister, and a paternal sister. The husband receives one-half, the full sister receives one-half, and the paternal sister receives one-sixth. This share, when combined with that of the full sister, becomes two-thirds. The total number of shares, then, is $1/2+1/2+1/6=1+1/6$. The case is inflated into 7 for the sake of the paternal sister.

20. A full sister, a mother, two maternal brothers, and a paternal sister. The full sister receives one-half, and the paternal sister receives one-sixth, to make a total of two-thirds. The mother receives one-sixth. The maternal brothers receive one-third: $(1/2+1/6+1/3+1/6=7/6)$. This case is also inflated to provide a one-sixth share for the paternal sister.

Note: Should there be a paternal brother as well in either of these last two cases, he will make his sister an *'aṣabah*. In that case, both of them will be blocked as the *tarikah* has been totally taken by the fixed-share heirs. However, the paternal sister is not blocked if the entire *tarikah* is taken by those with fixed shares, if she has no surviving brother. This is because she then has a fixed share. If she has a brother, he makes her *'aṣabah*, and both are dropped when the total *tarikah* has been taken by the fixed shares.

'Asharīyyat Zayd

Zayd Ibn Thābit, the Prophet's Companion who was a great authority on inheritance, ruled on a few cases, such as that of a full sister, the father's father, and a paternal brother. At first, Imām Zayd said that the total of this *tarikah* was 5 shares. He gave the sister 2.5 shares, the father's father 2, and the paternal brother the remaining one-half. In order to denote the shares by sound figures, he multiplied 5 by 2 to get a total of 10, (*'asharah* in Arabic). Hence this case has been called *al 'Ashrīyyah* or *al 'asharīyyah*.[19]

'Ishrīnīyyat Zayd

This was a case consisting of a father's father, a full sister, and 2 paternal sisters. Imām Zayd gave the grandfa-

---

[19] How did Zayd base this distribution?

He considered the heirs in this case as *'aṣabah*, two males, (the father's father and the paternal brother), and a female, (the full sister), a total of 2+1/2. The father's father takes one share, the paternal brother gets one, and the full sister gets one-half. To get sound figures, the shares were multiplied by 2, each. They became 2, 2,1, (a total of 5). The paternal brother then gave the sister from his share a portion to make her total one-half of the *tarikah*, so she had 2 1/2 of 5. To make sound shares, each share was multiplied by 2, and the result became 5+4+1=10.

ther two-fifths on the basis of sharing, which was better for
him than one-third. He gave the full sister 2.5 shares, as he
did in the preceding case. Then one-half of the balance was
left for the 2 paternal sisters. To make sound shares, Imām
Zayd inflated the total to 10. The grandfather received 4,
the full sister received 5, and the two paternal sisters re-
ceived 1 share. To make the paternal sisters' share divisible
by 2, he multiplied 10 by 2, thereby making a total of 20
shares (*'ishrīn* in Arabic). Hence the case became known as
al-'Ishrīnīyyah.

Mukhtaṣarat Zayd

The term *mukhtaṣarah* is derived from the root that
means "to shorten," as this method seeks to shorten the
solution. The heirs consist of a mother, the father's father, a
full sister, a paternal brother, and a paternal sister. The
mother receives one-sixth, and the remaining 5 are divided
between the 6 siblings (counting each male as 2 and each
female as 1), in addition to the grandfather. To get a divisi-
ble total, we multiply 6 by 6 for a total of 36. The mother
takes 6, the full sister receives 18, and the grandfather re-
ceives 10 shares. The remaining 2 shares cannot be divided
among the 3 remaining heirs (i.e., 2 sisters and their
brother). Therefore, 3 is multiplied by 36 for a total of 108.
The mother receives 18, the full sister receives 54, the
grandfather receives 30, the paternal brother receives 4, and
his sister receives 2.

As we can see, all of these figures are divisible by 2.
In order to *shorten* (or reduce) the figures denoting the
numbers of the shares to the minimum multiple total,
Imām Zayd divided them by 2, (their common dividing
factor), to obtain the following figures: 9, 27, 15, 2 and
1. Thus, the figures were made smaller or shorter
(*mukhtaṣarah* in Arabic).

As a matter of fact, this particular case can be resolved in an even shorter way: The mother receives one-sixth, and the grandfather receives one-third of the balance. Each case involving one-sixth of the *tarikah* and one-third of the balance can have a total of 18 shares. The mother receives 3, the full sister receives 9, the grandfather receives 5, and the 3 paternal siblings receive the remaining 1 share. So, 3 is multiplied by 18 to get a total of 54. However, the earlier method is more in keeping with the meaning of *mukhtaṣarah*.

Tis'īniyyat Zayd

A mother, a father's father, a full sister, 2 paternal brothers, and a paternal sister. The mother receives one-sixth and the sister receives one-half, for a total of two-thirds (1/6+1/2= 4/6). The balance is one-third. The case can be resolved by inflating the total to 18. The mother receives 3 shares. Now, one-third of the balance of 15 is better for the father's father. The sister takes one-half (9), and the remaining 1 share is divided among the siblings. In order to make sound shares, 18 is multiplied by 5 (the number of siblings, counting each female as 1 and each male as 2). The new total is 90 (*tis'īn* in Arabic). Hence the case is called *Tis'īniyyat Zayd*. The mother receives 15, the grandfather receives 25, (one-third of the balance), the full sister receives 45, (one-half of the *tarikah*), and the remaining 5 is given to the paternal siblings (2 to each brother and 1 to their sister). If there is no mother, but rather a maternal grandmother, (a mother's mother), the same procedure would apply.

AL ḤISĀB (CALCULATION)

Although we now have better, easier, and faster ways and means of calculating, it is still of great interest and in-

spiration to study the ingenious ways and methods developed by our early teachers and scholars to analyze and determine sound figures for the values of the shares due to heirs in all possible cases.

a. CASES WHICH DO NOT INCLUDE A FIXED SHARE

Some cases do not involve a fixed-share heir, and this is when all heirs are *'aṣabah*. Then their numbers are added up (each male counted as 2, and each female counted as 1), and the *tarikah* is divided according to the new total number of shares. When the shares are distributed, each male takes double the share of the female. Let's take the example of someone who died leaving behind 2 sons and 1 daughter. The number of the sons is multiplied by 2, because his share is twice that of the female. The product is then added to 1 (representing the daughter's share), which produces a total of 5. So each son receives two-fifths and the daughter receives one-fifth.

b. CASES WHICH INCLUDE FIXED SHARES

Some cases have one or more fixed-share heirs. Fixed shares, as we know, are represented by one of seven fractions: one-half, one-third, one-fourth, one-sixth, one-eighth, one-twelfth, and one-twenty-fourth. These fractions and their denominators are called "bases" or "foundations" (*uṣūl* in Arabic). In addition to these seven bases, which are agreed upon by all authorities, there are two additional (but disputed) bases pertaining to cases involving siblings and the father's father, thus making the total of the *uṣūl* 9. The numerator of each case is one. The first six fractions are Qur'ānic, in addition to the two-thirds (the share of 2 or more daughters and of 2 or more sisters). However, the denominator of the one-third and of two-thirds (3) is the same.

Three of the *uṣūl* mentioned above (i.e., 6, 12, and 24) may or may not be inflated, whereas the others, (i.e., 2, 3, 4, and 8), cannot be inflated. In these cases, "inflated" means an increase in the total number of shares and the consequent proportional reduction in the real value of each share (also known as *'awl*). This will be fully discussed later.

In addition to these fractions, there are two more: one-eighteenth and one-thirty-sixth. There is a dispute over their validity. They occur only in cases involving the father's father and siblings. As we may recall, Imām Abū Ḥanīfah, like Caliph Abū Bakr, excludes the siblings when the father's father is involved.

Let's have some examples, first of cases that have no inflation and include the fraction of one-sixth, which can stand alone in many cases. Let's take the case of a grandmother and the paternal uncle, (*'amm*, a father's brother). The grandmother receives one-sixth, and the paternal brother (a father's brother) receives the balance.

A similar case is that of a father (or a father's father), a son, and the mother. The father (or grandfather) receives one-sixth, the mother receives one-sixth, and the son receives the balance.

The one-sixth and the one-half shares may be joined, as in the case of a grandmother, a daughter, and a paternal uncle, (a father's brother). The grandmother receives one-sixth, the daughter receives one-half, and the paternal uncle receives the balance of one-third.

The one-sixth share may also join with the one-third share, as in the case of a mother, 2 maternal brothers, and a paternal uncle (a father's brother). The mother receives one-sixth, the two maternal brothers receive one-third, and the paternal uncle (a father's brother) receives the balance.

The one-sixth share may occur with another one-sixth share, as in the case of a grandmother, a maternal brother,

and a paternal uncle (a father's brother). The grandmother receives one-sixth, the maternal brother receives one-sixth, and the paternal uncle (a father's brother) receives the balance.

The one-sixth share can also occur with the two-thirds share, as in the case of a mother, two daughters, and a paternal uncle (the father's brother). The mother takes one-sixth and the two daughters take two-thirds, for a total of 5 shares. The paternal uncle (a father's brother) takes the remaining share.

This is also the case with a one-half share and one-third share, as in the case of the mother, a full sister, and two maternal brothers. The mother receives one-sixth, the full sister receives one-half, and the two maternal brothers receive one-third. The resulting total is 6 shares.

A one-sixth share also can come along with a one-half share and another one-sixth share, as in the case of a daughter, a son's daughter, a mother, and the paternal uncle (a father's brother). The daughter receives one-half and the son's daughter receives one-sixth, for a total of two-thirds. When the mother's one-sixth is added, the total is 5 shares. The remaining 1 share goes to the paternal uncle.

The one-sixth share also can exist with a one-half share and another two-sixths share, as in the case of a mother, a full sister, and two maternal sisters. The mother receives one-sixth and the full sister receives one-half, for a total of two-thirds. Each maternal sibling receives one-sixth of the remaining one-third. The grand total is 6 shares. Moreover, a one-sixth share can combine with a two-thirds share and with another one-sixth share, as in the case of a mother, two full sisters, and one maternal sister. The mother receives one-sixth, the two full sisters receive two-thirds, and the maternal sister receives one-sixth. The resulting total is 6 shares.

The division of the inheritance into six portions to make the distribution easy and sound may occur in cases involving one-half and one-third shares. One example is a case involving a mother, a husband, and a paternal uncle. The husband receives one-half and the mother receives one-third, for a total of five-sixths. The paternal uncle (a father's brother) receives the remaining 1 share.

The above cases are resolved smoothly and do not involve any inflated values. Each share keeps its real value, and the total number of distributed shares is either the same as the total or sometimes less. In the latter case, the remaining balance is distributed proportionately among the heirs, as explained in the relevant chapter.

The figure 6 can be the value of 1 share or the total of several shares, as we have seen in the above examples. A total of 12, making it the denominator, results only in cases involving at least 2 heirs with fixed shares. This is also true of the total of 24. As 12 is the minimum multiple of 3 and 4, it is used in distributing shares involving one-third and one-fourth, as in the case of a wife, 2 full sisters, and the father's brother. The wife receives one-fourth and the 2 full sisters receive two-thirds, for a total of 11 shares. The paternal uncle receives the remaining 1 share. The total of 12 can also result in cases combining a one-fourth and a one-sixth shares, and in those combining a one-half and a one-fourth shares.

In cases involving a wife, a grandmother, and a paternal uncle, the wife receives one-fourth and the grandmother receives one-sixth, for a total of five-twelfths. The paternal uncle receives the remaining 7 shares. In the case of a woman who dies leaving behind her husband, a daughter, a paternal niece, (a son's daughter), and a paternal uncle, the husband receives one-fourth (there are surviving offspring), the daughter receives one-half, and the paternal niece (a

son's daughter) receives one-sixth. As the resulting total is 11 shares, the uncle receives the remaining share. The total of the fixed shares in such cases never reaches 12. When there is an *'aṣabah*, as in the case of the paternal uncle (a father's brother), he takes the balance; otherwise, the balance is distributed proportionately among those entitled to fixed shares.

The third basic total is 24. It can be inflated by adding one-eighth, which makes a total of 27. This occurs in two situations: those combining one-eighth, one-half, one-sixth, one-sixth, and one-sixth shares, as in the case of a wife, a daughter, a paternal niece (a son's daughter), a father, and a mother, respectively. The resulting total is 27, $(1/8+1/2+1/6+1/6+1/6=27)$; and in situations combining one-eighth, two-thirds, one-sixth, and one-sixth shares, as in the case of a wife, 2 daughters, a father, and a mother, respectively. The resulting total is 27 $(1/8+2/3+1/6+1/6=27)$.

This case is called *al minbarīyyah*, for it was raised to Imām Alī Ibn Abū Ṭālib while he was delivering a sermon from the *minbar* (pulpit) in Kūfah. Someone in the audience interrupted him to ask about this case. The Imām instantly said: "Her (the wife's) one-eighth has become one-ninth." The wife's share is reduced here from one-fourth to one-eighth of the *tarikah* because there were surviving daughters, and the parent's share was reduced to one-sixth each for the same reason.

c. TOTALS THAT CANNOT BE INFLATED

There are four totals that do not inflate:

1. The number 2, which is the base in two situations: cases combining one-half as a fixed share and the balance, as in the case of a husband (or a daughter, a paternal niece (a son's daughter), or an agnatic sister), and

a paternal uncle (the father's brother). The remaining balance is one-half. Such a case is called incomplete (*naqīṣah* in Arabic), as the fixed share does not absorb the *tarikah*; and cases combining two halves as fixed shares, as in the case of a husband and an agnatic sister. In such situations, the case is described as balanced (*'ādilah* in Arabic).

2. The second base number that cannot be inflated is 3, whenever the fixed share is one-third or two-thirds. This applies in two situations: a-Cases described as *nāqīṣah* (short or incomplete). The first example is that of a mother (one-third) and a paternal uncle (a father's brother) (the balance). Another example: 2 daughters who receive two-thirds, and a paternal uncle (the father's brother) who receives the balance. b-Cases described as *'ādilah* (balanced), when the one-third and two-thirds shares are combined, as in the case of 2 agnatic sisters (two-thirds) and 2 maternal sisters (one-third).

3. The third non-inflated base is 4, as seen in the following cases: A wife (one-fourth), and a paternal uncle (the father's brother) (the balance). This also applies in the case of a husband (one-fourth) and a son (the balance); two halves, as in the case of a husband (one-half), a daughter (one-half), and a paternal uncle (a father's brother); the case of a wife (one-fourth), an agnatic sister (one-half), and a paternal uncle (a father's brother); the case of one-fourth and one-third of the balance, as in the case of a wife (one-fourth), a mother (one-third of the balance), and a father (the remainder). This is the second of the two renowned cases named after the Caliph 'Umar Ibn al-Khaṭṭāb.

4. The base of one-eighth is 8. Both 4 and 8, when they serve as bases, are always shortened.

The bases 18 and 36 occur only in cases involving a father's father (*jadd*) and brothers (*ikhwah*). Examples are:

a-When 18 is the base, as when shares of one-sixth and one-third of the balance plus the final balance are combined, as in the case of a mother (one-sixth), a paternal grandfather (a father's father) (one-third of the balance), and 5 agnatic brothers (2 shares each of the balance);

b-When 36 is the base, as in the case of a wife (one-fourth), a mother (one-sixth), the father's father (one-third of the balance), and 7 siblings (2 shares each of the final balance);

c-When the total is 24, as in cases combining a mother (one-sixth, there is a surviving son) and a wife (one-eighth, there is a surviving son). The minimum common multiple of 6 and 8 is 24. Based on this, the mother receives 4, the wife receives 3, and the son receives the remaining 17 shares. An example of the latter situation is the case of a wife (one-eighth), 2 daughters (two-thirds), and the son's son (the remaining 5 shares);

d-When one-half (a daughter), one-sixth (a son's daughter), and one-eighth (a wife) shares may combine in the case of a wife, a daughter, a paternal niece (a son's daughter) (one-sixth), and the father's brother (a father's brother) (who receives the balance).

The two-thirds and the one-sixth shares may occur in such cases as the mother (one-sixth), a wife (three-twenty-fourths), 2 daughters (two-thirds), and a paternal uncle (the remaining 1 share). The one-eighth share may occur with two-sixths, as in the case of a man who died leaving behind his wife (one-eighth), his parents (who receive one-sixth each), and his son (the remaining 13 shares).

The one-eighth share also may combine with the one-half and the two-sixths shares, as in the case of a wife (one-eighth), a daughter (one-half of the *tarikah*), and the de-

ceased husband's parents (who receive one-sixth each). The minimum common multiple of 8, 2, 6, and 6 (the denominators of the shares in this case) is 24. The wife takes 3 shares, the mother receives 4, and the father also receives 4 shares. A one-eighth share can never exist with a one-fourth or a one-third share, for the one-fourth share belongs to the wife if there are no surviving offspring. She also receives a one-eighth share when there is a child. Two opposed things cannot occur together.

The mother receives a one-third share when there is no surviving child and there are not two or more siblings. Once the mother's share is reduced by a surviving child, the wife loses her chance to receive a one-fourth share. As for a maternal brother receiving one-third, it is not quite exactly so, for only two or more of this category may receive one-third or share one-third. Each receives no more than one-sixth (one-third is a total of two one-sixth shares).

AL 'AWL (INFLATION)

While delivering a sermon in Kūfah, Imām Alī Ibn Abū Ṭālib, who was endowed with a very sharp, analytical, and swift mind, was interrupted by someone who asked about distributing a *tarikah* among a deceased's parents, two daughters, and wife. The brilliant Imām immediately said: "Her share has become one-ninth."

The Imām meant to say that the wife's share (one-eighth, as there are surviving daughters) was reduced to one-ninth. In such a case, the two daughters' share is two-thirds, the parents' shares amount to a total of one-third, and the wife's legal share is one-eighth. The minimum common multiple of the denominators (3, 3, and 8) is 24. The daughters' share is 16, the parents receive 8, and the wife receives 3 shares. The total has to be inflated to 27, which reduces the wife's share to one-ninth. As the total number

of shares has been increased, the actual value of each share has decreased.

The Imām gave this answer immediately, and then proceeded with the rest of his eloquent sermon, which he began before this interruption with the words: "Praise and gratitude be to Allah, Who definitely rules with the truth. He rewards every soul for that which it strives (to achieve), and He is the One unto Whom will be the appointed return."

The quick, sharp intelligence of the great Imām also revealed itself while he was traveling in southern Iraq. One day, while sitting on his horse, he met a woman who held his horse's neck and began to complain: "O Commander of the Faithful. Qāḍī Shurayḥ (of Kūfah) gave me only one *dinār* from my brother's inheritance, which amounted to six hundred *dinārs*."

The Imām instantly asked her: "Perhaps your brother has left behind, in addition to you, two daughters, his mother, a wife, and 12 brothers?"

"Yes," she affirmed.

"Then Shurayḥ did no injustice to you," he replied, and went on his way.

The Imām reached his decision by the following procedure. He subtracted 1 from 600, leaving a balance of 599 *dinārs*. Two-thirds is the share of two daughters or two sisters, but since she introduced herself as a sister receiving 1 *dinār*, the two-thirds most probably went to the daughters. Then the mother received one-sixth (100), making a total of 500 *dinārs* along with the daughters' share. From the remaining 100, the wife received one-eighth (75), leaving a balance of 25, of which the sister received 1. So, she must have had 12 brothers, each of whom received 2 (2x12=24), or twenty-four sisters, thus leaving 1 to this sister. But 12 brothers was the greater probability, and

therefore the Imām made an educated guess. This long and complicated mathematical process was performed in his mind within a split second.

Returning now to the subject of *'awl,* we should bear in mind that the earliest case to use it arose in the time of Caliph 'Umar. This case involved a woman who died, leaving behind her husband and two sisters. Caliph 'Umar said: "If we start with the husband, (giving him half of the *tarikah,* as he should receive), the balance (one-half) will be insufficient for the two sisters (who should receive two-thirds). Yet if we start with the daughters (giving them two-thirds) and leaving a balance of one-third, it will be insufficient for the husband (who should receive one-half). The Caliph asked for advice. Al 'Abbās Ibn 'Abd al-Muṭṭalib, the father's brother of the Messenger of Allah, suggested the procedure of inflation (*'awl*), and the Caliph agreed. The total was inflated in a proportional manner, which lowered the shares' actual value. The husband received 3 (out of 7 instead of 6), and the 2 sisters received 2 shares each.

Later on, 'Abd Allāh Ibn 'Abbās was faced with a case involving a woman who died, leaving behind her husband, her mother, and an agnatic sister. He opposed Caliph 'Umar, who ruled that the sister should receive her full one-half share, thus causing him to use the procedure of inflation. According to Ibn 'Abbās, the husband should receive one-half and the mother should receive one-third. He then gave the balance, one-sixth (which is less than one-half) to the sister. 'Abd Allāh Ibn 'Abbās opposed this method of *'awl* because it maintained the original proportion of the shares at the cost of the value of the shares. He was reported to have said: "By Him Who knows the number of atoms in the grain of sands, had they (Caliph 'Umar and his supporters) given priority to those whom Allāh advanced (those who were mentioned first in the Qur'ān),

and delayed those whom Allāh put behind,[20] there would not have been a need for *'awl*." When he was asked, "Why did you not say that to 'Umar?," he replied, "He was a man of an immensely awe-inspiring personality, and I felt intimidated by him."

Al Shaykh al Subkī, a leading eighth *hijrī* century Shāfiʿī scholar, commented: "Ibn ʿAbbās did not mean to say that Caliph ʿUmar would not have listened to him, as the Caliph was renowned as a man who was always ready and prepared to listen to the word of truth and welcomed any piece of advice offered to him. While he was criticizing, from the pulpit, the exaggerated demands of inflated dowries in marriage, urging his audience not to pay a dowry higher than that paid to Fāṭimah al Zahrā' (the Prophet's daughter), the Caliph was interrupted by a woman who exclaimed: 'How dare you say that! Have you forgotten Allah's words: *And if you wish to exchange a wife for another and you have given one of them a sum of money the weight of a ton, take nothing from it?*'" He responded: "A woman said the truth, and 'Umar is wrong."

Moreover, a woman who was pregnant from a confessed adulterous liaison was brought to him. When he was about to apply the prescribed punishment, Muʿādh Ibn Jabal intervened and said: "She deserves the punishment, but you should fear Allah regarding what is in her womb." Caliph 'Umar postponed her punishment and said: "Women hardly give birth to such worthy men as Muʿādh. 'Umar would have been damned if not for Muʿādh."

"Caliph 'Umar's toughness revealed itself only in cases of immoral violations," al Shaykh al Subkī said, adding:

---

[20] The Qur'ānic text dealing with the inheritance of children, parents, and spouses comprises Qur'ān 4:11-12. The *āyah* dealing with the inheritance of the sister is found in Qur'ān 4:176.

"He even used to say: 'May Allāh bestow His mercy on any person who may draw 'Umar's attention to his short-comings.'"

Returning to the subject of *'awl,* however, which was adopted by the four leading imāms of jurisprudence, we should be aware that the total of 6 may be inflated into:

i.   A total of 7, as in the case of a woman who died leaving behind her husband (one-half) and two full or paternal sisters (two-thirds). The minimum common multiple of the denominators (2 and 3) of the fractions is 6, which is the original total. However, as 3+4=7, the total must be inflated to 7. That was the earliest case of inflation (*'awl*).

ii.   A total of 8, as in the case of a woman who died leaving her husband (one-half), her mother (one-third), and a full or paternal sister (one-half). That is the case disputed by 'Abd Allāh Ibn 'Abbās against the majority. Again the original total was 6 (2x3=6). The husband receives 3, the mother receives 2 and the sister receives 3. The inflated total is 3+2+3=8.

A second case involves a husband (one-half), a mother (one-sixth), and two full or paternal sisters (two-thirds). The inflated total is 3+1+4=8. A third case of a total 6 inflated into 8 is that of a woman who died leaving behind a husband (one-half), a full sister (one-half), and two maternal sisters (one-sixth each). The inflated total is 3+3+1+1=8.

iii. A total of 6 inflates into 9 in four cases:

a-a husband (one-half), the mother (one-sixth), a full or paternal sister (one-half), and two maternal sisters (one-sixth each). The inflated total is 3+1+3+1+1=9;

b-a husband (one-half), 2 full or paternal sisters (two-third), and 2 maternal sisters (one sixth each). The inflated total is 3+4+1+1=9. This particular case became known as *al Gharrā'* (The Shining One);

c-a husband (one-half), a mother (one-sixth), 2 full or paternal sisters (two-thirds), and a maternal sister (one-sixth). The inflated total is 3+1+4+1=9;

d-and a husband (one-half), a full sister (one-half), and 2 maternal siblings (one-sixth each). The total is 3+3+1+1+1=9.

Now we encounter again the case known as *al Adar-īyyah,* in which the total was inflated from 6 to 9. It consisted of the mother (2), the husband (3), a full or a paternal sister (3), and the paternal grandfather (a father's father) (1), making a total of 9 shares. To prevent the sister from obtaining more than the father's father, the Caliph 'Umar ruled that she had become an *'aṣabah* due to the surviving grandfather. Therefore her share was added to his, and the total was then divided between both of them, the grandfather received twice as much as the sister. To make the shares sound figures, 9 was multiplied by 3 to obtain a total of 27 shares. The husband received 9, the sister received 9, the mother received 6, and the father's father received 3 shares.

The procedure of *'awl* may inflate the total of 6 into 10. This occurs in two cases:

a-a husband (one-half), a mother (one-sixth), 2 full or paternal sisters (two-thirds), and 2 maternal sisters (one-sixth each). The inflated total is 1/2+2/3+1/6+1/6+1/6, which equals 3+4+1+1=10;

b-a husband (one-half), a mother (one-sixth), a full sister (one-half) and a paternal sister (one-sixth) who together have a two-thirds share, and two maternal brothers

(one-sixth each). The minimum common multiple of the denominators is 6. The husband receives 3, the mother receives 1, the full sister receives 3, the paternal sister receives 1 (to make a total of two-thirds with the full sister), and the 2 maternal brothers receive 1 each. This is a total of 3+1+1+3+1+1=10.

It is important to note that the total (6) cannot be inflated above 10.

INFLATION OF THE TOTAL 12

Inflating the total of 12 which results from adding the numerators of the fractions representing the shares, can be inflated into the odd numbers of 13, 15, or 17. The total 12 can be inflated into 13 in three cases:

1-those consisting of shares amounting to one-fourth (a wife), one-sixth (the mother), and two-thirds (two agnatic sisters). The total of the numerators is 13 (1/4+1/6+2/3=3+2+8 over 12, or 13/12);

2-those consisting of shares amounting to one-fourth (a husband), one-half (the daughter), and two-sixths (one-sixth each received by a parent and a son's daughter. When a son's daughter's share is combined with that of the daughter, a total of two-thirds is reached. The overall total is 3+2+6+2=13; and

3-those that consist of a wife (one-fourth), the mother (one-third), and a full sister (one-half). The total is 3+4+6=13.

INFLATION INTO 15

Inflating the total to 15 occurs in four categories:

1-cases consisting of a husband (one-fourth), the father (one-sixth), the mother (one-sixth), and two daughters (two-thirds). The total is 3+2+2+8=15;

2-those consisting of a wife (one-fourth), two full sisters (two-thirds), and two maternal brothers (one-sixth each). The total is 3+8+2+2=15;

3-those consisting of a husband (one-fourth), a daughter (one-half), and a son's daughter (one-sixth), a total of combined shares is two-thirds, and the parents (one-sixth each). The total is 3+6+2+2+2=15; and

4-those consisting of a full sister (one-half), a wife (one-fourth), the mother (one-sixth), and two maternal siblings (one-sixth each). The total is 6+3+2+2+2=15.

INFLATION OF 12 INTO 17

The total of 12 can be inflated to 17 in two circumstances:

a-those involving a wife (one-fourth), two maternal brothers (one-third), a mother (one-sixth), a full sister (one-half), and a paternal sister (one-sixth). The total of these last two shares equal two-thirds when combined. The total is 3+4+2+6+2=17;

b-those involving 3 wives, who receive one-fourth to share among themselves (3 of 12, 1 for each); 2 grandmothers (a mother's mother and a father's mother), who share one-sixth (2 of 12, 1 for each); 4 maternal sisters, who share one-third (4 of 12, 1 for each); and 8 agnatic sisters, who share two-thirds of the *tarikah* (8 of 12, 1 for each). The total is 3+2+4+8=17, that is, 17 shares divided among 17 ladies.)

INFLATION OF 24 TO 27

The total of 24 can be inflated into 27 in two cases:

a-a wife, a father, a mother, and 2 daughters. This case, known as *al minbariyyah*, consisted of a wife, the parents, and 2 daughters. Imām Alī immediately said: "Her (the wife's share) has become one-ninth," and then continued on with his sermon. The parents received a total of one-third,

the two daughters received two-thirds, and the wife received one-eighth. The minimum multiple of the denominators (8 and 3) is 24. The total of the numerators representing the ratios of the shares is 3+8+16=27. Thus the wife's inflated share is one-ninth, as the Imām correctly said;

b-a daughter (one-half) and a son's daughter (one-sixth), that becomes two-thirds when joined together, a wife (one-eighth, there are surviving offspring), a father (one-sixth, there are surviving offspring), and a mother (one-sixth, there are surviving offspring). The minimum common multiple of the denominators (2, 6, 6, 6, and 8) is 24. We divide the total of the denominators by each denominator and then multiply the result by the numerator of each fraction. The total of the nominators representing the ratio of the shares is 3+16+4+4=27.

Totals That Cannot Be Inflated

Now we come to the four bases that cannot be inflated:
1. Cases consisting of two shares, one that is one-half and the other is the balance. As we know, a one-half share can be assigned to the husband, the daughter, the son's daughter, the full sister, or the paternal sister. If any of these relatives are combined with an *'aṣabah* (i.e., the paternal uncle or *al 'amm)*, one-half is given to the appropriate fixed-share heir, and the balance (also one-half) is given to the paternal uncle. So the *tarikah* is split into two parts, one part for each heir. A similar case is when 2 heirs are entitled to a one-half share, as when the deceased is inherited by a husband and a full or paternal sister. Each receives one-half as his and her share.
2. The second base that cannot be affected by inflation is 3, the denominator of the one-third and two-third

shares. The one-third share is like the case of the mother and the father's brother. The mother receives one-third and the paternal uncle receives the balance. The two-thirds share is like the case of two daughters (two-thirds) and a paternal uncle (a father's brother) (who receives the balance). Another case occurs when the deceased is inherited by 2 agnatic sisters (two-thirds) and 2 maternal sisters (one-third). In each case, the base is 3.

3.   The third base that cannot be inflated is 4, which is the denominator of the one-fourth share. This occurs in: (a) such cases as the following: a wife and a paternal uncle (a father's brother); (b) a husband (one-fourth) and a son, the balance, (three-fourths); (c) a husband, a daughter, and a paternal uncle (a father's brother); or (d) a wife (one-fourth), an agnatic sister (one-half), and a paternal uncle (a father's brother) (who receives the balance); and (e) when a one-fourth share is accompanied by a one-third share of the balance, as occurs in the case of a wife (one-fourth), the mother of the deceased (who receives one-third of the balance, according to Caliph 'Umar), and the father (the remaining 2 shares).

4.   The denominator of one-eighth is 8. It is the fixed share of the wife when there is a child of the deceased. This base cannot be inflated.

Let's not forget that there are two other non-inflated bases: 18 and 36. These occur in only two situations, both of which include siblings and a paternal grandfather (the father's father). Here are two examples:

A mother, a paternal grandfather (a father's father), and 5 agnatic brothers. As we recall, Imām Abū Ḥanīfah ruled that the siblings had no shares because the paternal

grandfather (a father's father) blocks them. In the majority view, however, the paternal grandfather (a father's father) takes what is best for him after the mother takes her fixed share (one-sixth). As the number of the siblings is more than twice the grandfather's number, he receives one-third of the balance (which is better than what he would receive by sharing, and better than one-sixth). The total shares of the mother and the grandfather is $1/6+1/3(5/6)=1/6+5/18=(3+5)/18=8/18$. The balance remaining for the five brothers is $1-8/18=10/18$. So, each brother gets $10/18\div5=2$. Thus, the shares are inflated to 18, the mother receives 3, the grandfather receives 5, and the 5 agnatic brothers share the remaining 10 shares equally.

A wife (one-fourth), the mother (one-sixth), 7 agnatic brothers (who share the remaining balance equally), and the paternal grandfather (a father's father) (who receives one-third of the balance [which is better than what he would receive by sharing, and better than one-sixth]). The denominators here are 6, 4, and 3. Their minimum multiple is 12. The total of the shares of the mother and the wife is $1/6+1/4=5/12$. The balance is seven-twelfths. One-third of this balance, $7/12\times1/3$ for the father's father, is $7/36$. The total shares taken by the wife, the mother, and the grandfather is $1/6+1/4+7/36=22/36$. The remainder, $36-22=14$, is distributed equally among the 7 brothers.

Let's have some more exercises:
1. A daughter and 2 paternal uncles (a father's brother). The daughter receives one-half, and the one remaining share is shared by the 2 paternal uncles. Since 1 is not divisible by 2, the number of uncles is multiplied by the denominator (2), which results in a total of 4. Thus, the daughter receives 2 shares, and each uncle receives 1 share.

2. A mother and 3 paternal uncles (a father's brother). The mother receives one-third, and the 3 uncles receive the remaining two shares. Since 2 is not divisible by 3 (the number of uncles), the number of uncles has to be multiplied by the denominator (3), which gives a new total of 9. The *tarikah* is split into 9 portions, of which the mother receives 3, and the remaining 6 are distributed equally among the 3 uncles.

3. A mother and 6 paternal uncles (a father's brother). The mother receives one-third, and the remaining shares are given to the 6 paternal uncles. Since 2 is not divisible by 6, the minimum multiple of 3 (the number of uncles) is multiplied by 3 (the denominator) to get a new total of 9. The mother receives 3 shares, and each uncle receives 1 share.

4. A wife and 2 paternal uncles (a father's brother). The wife receives one-fourth, and the remaining 3 shares are given to the 2 uncles. Their number (2) is multiplied by the denominator (4), which gives a new total of 8. The wife receives 2 shares, and the 2 uncles receive 3 shares each.

5. A wife and 6 paternal uncles (a father's brother). The wife receives one-fourth, and the remaining 3 shares are given to the 6 paternal uncles. The common denominator here is 8. Thus, the wife receives 2 shares, and each paternal uncle receives 1 share.

6. A daughter, a mother, and 3 paternal uncles (a father's brother). The daughter receives one-half, and the mother receives one-sixth. The common denominator here is 18. The daughter receives 9 shares (one-half), the mother receives 3 shares (one-sixth), leaving 6 shares, 2 for each paternal uncle.

7. A daughter, a mother, six paternal uncles (a father's brother). The daughter receives one-half, the mother

receives one-sixth, and the remaining one-third, (2), has to be shared by the 6 paternal uncles. The common denominator in this case is 18. The daughter receives 9 shares, the mother 3 shares, and each paternal uncle receives 1 share.

8. A husband and 5 full sisters. The husband takes one-half and the full sisters take two-thirds, for a total of seven-sixths. The common multiple is 6, of which 3 go to the husband and 4 to the 5 sisters. This case becomes inflated, using a denominator of 7, giving the husband 3 shares and dividing the 4 remaining shares among five full sisters. The common denominator here is 35; the husband receives 15, and each full sister receives 4.

9. A wife and 5 sons. The wife receives one-eighth, and the remaining shares, 7, are divided among the 5 sons. As 7 is not divisible by 5, the denominator, 8, is multiplied by the number of sons, 5, to make 40. The wife receives 5 shares (one-eighth) and the sons receive 7 shares each. The total is $5+(7\times5)=40$.

10. A husband, mother, and 3 sons. The husband receives one-fourth, and the mother receives one-sixth. The minimum common multiple of 4 and 6 is 12. If the husband takes 3 and the mother receives 2, the remaining balance (7) is not divisible by 3 (the number of sons). Therefore 3 is multiplied by 12 to obtain a new total of 36. The husband receives 9 shares, the mother receives 6, and the remaining 21 shares are divided equally among the 3 sons.

11. A wife, mother, and 5 full sisters. The wife receives one-fourth, 3 out of 12, the mother receives one-sixth, 2, and the 5 sisters share two-thirds share, 8. The total is $3+2+8=13$. In order to make sound shares, 5 (the number of sisters) has to be multiplied by the total number (13), which gives a new total of 65. The wife

receives 3x5=15 shares, the mother receives 2x5=10, and the sisters share equally the remaining 40 shares.

12. A wife, mother, and 2 sons. The wife receives one-eighth, the mother receives one-sixth, and the 2 sons share the balance. The common minimum multiple is 24. Of this new total, the wife receives 3 shares and the mother receives 4, for a total of 7. The 2 sons share the remaining 17 shares. As 17 is not divisible by 2 (the number of the sons), 2 is multiplied by 24 to get a new total of 48. Of this total, the wife receives 6 and the mother receives 8, a total of 14. As 48-14=34, each son receives 17 shares.

13. A wife, father, mother, and 3 daughters. The wife receives one-eighth, the father receives one-sixth, the mother receives one-sixth, and the 3 daughters share two-thirds. The minimum common multiple is 24, which is inflated to 27 (3+4+4+16=27). Since the daughtersï share, 16/27, is not divisible by 3, the number of the daughters, 3, is multiplied by 27 (27x3=81) to provide sound shares. The wife receives 9 shares, the mother receives 12, the father receives 12, and the 3 daughters receive 48. The total is 9+12+12+48=81.

14. A mother, a paternal grandfather (a father's father), and 7 full or paternal brothers. The mother receives one-sixth, the paternal grandfather (a father's father) receives one-third of the balance (which is better than one-sixth or what he would receive by sharing), and the 7 full or paternal brothers share the remainder. Using a common denominator of 126 (6x7x3), the mother receives 21 and the paternal grandfather (a father's father) receives 42, for a total of 63. The remaining 63 shares are divided equally among the 7 brothers.

15. A mother, a wife, a paternal grandfather (a father's father), and 3 full or paternal brothers. The mother re-

ceives one-sixth, 2 of 12, the wife receives one-fourth, 3 of 12, the father's father who gets 1/6 (better than sharing and than 1/3 of the balance). The total is: 1/6+1/4+1/6=(2+3+2)/12=7/12. The full or paternal brothers receive five-twelfths. Then 3x13=36. The mother receives 6 and the wife receives 9, and the father's father 6, making a total of 21. The remaining 15 are divided by 3 (the number of agnatic brothers), so each receives 5 shares.

16. Three maternal brothers and 3 paternal brothers. The maternal brothers share one-third, and the 3 paternal brothers take the balance, which is two-thirds. The common denominator is 9. The maternal brothers receive 3, and the paternal brothers share equally the remaining 6 shares.

17. Four grandmothers and 6 paternal uncles (a father's brother). The 4 grandmothers share one-sixth, and the remaining five-sixths goes to the 6 paternal uncles. The maximum multiple of the denominators = 3x4=12, is multiplied by the total of the numerators: 5+1=6, making a total of 72. The 4 grandmothers receive 12 shares, and the remaining 60 shares are shared equally by the 6 paternal uncles.

18. A mother, 8 full sisters, and 4 maternal brothers. The mother receives one-sixth, the 8 sisters receive two-thirds, and the 4 maternal brothers (a mother's son) receive one-third. This adds up to seven-sixths, and thus has to be inflated to 7 and then to 14. The mother receives 2 shares, the 8 full sisters receive 8 shares, and the 4 maternal brothers receive 4 shares.

19. A mother, 8 full sisters, and 8 maternal brothers. The mother receives one-sixth, the 8 sisters receive two-thirds, and the 8 maternal brothers receive one-third. This adds up to seven-sixths, and thus has to be inflated

to 28. The mother receives 4, the 8 full sisters receive
16, and the 8 maternal brothers receive 8 shares.

20. A mother, 24 full sisters, and 8 maternal brothers. The
total is inflated into 84 shares. The mother receives 12,
the full sisters share 48, and the maternal brothers share
24.

21. A husband, 12 full sisters, and 4 maternal brothers. The
husband receives one-half, 3 of 6, the 12 full sisters re-
ceive two-thirds, 4 of 6, and the 4 maternal brothers re-
ceive one-third, 2 of 6. This is a total of 6 inflated to 9
and then to 54. The husband receives 18 shares, the 12
sisters receive 24, and the maternal brothers receive 12
shares, 3 each.

22. A wife, 4 grandmothers, and 2 paternal uncles (father's
brothers). The wife receives one-fourth and the 4
grandmothers share one-sixth, for a total of five-
twelfths. The remaining 7 shares are shared by the 2
paternal uncles. The common denominator is 24. The
wife receives 6, the 4 grandmothers receive 4, and the
remaining 14 shares are shared equally by the 2 pater-
nal uncles.

23. A father's father, a father's mother, a mother's mother,
and 5 full or paternal uncles (father's brothers). The
paternal grandmother (a father's mother) and the ma-
ternal grandmother (a mother's mother) receive one-
sixth, 3 of a total 18. The remaining 15 shares go to the
5 brothers and the paternal grandfather. The father's
father's best inheritance is one-third of the balance, 5
of 18. The 5 brothers receive the remaining 10 shares.

AL MUNĀSAKHĀT
(DYNAMIC CALCULATIONS)

Munāsakhāt is the plural *munāsakhah*, which is of the
pattern denoting the idea of interaction. It is derived from
the root NSKH which means abrogation, change, removal,

transformation, or transfer. In jurisprudence, this term means replacing one religious ruling by another. In our context, however, it means how to deal with a particular problem: 2 persons died one after the other, and the latter one (an heir of the first) died before the distribution of the *tarikah* belonging to the first deceased person.

It appears to be much simpler and easier to determine and distribute the inheritance of the person who died first, and then deal with the inheritance of the person who died later. Yet, our early scholars thought that this would take more time, so they preferred to deal with this issue by combining the two cases. According to them, there are four possibilities, depending upon whether one or more heirs die(s) before or after the first *tarikah* is distributed. Let us review the following situations:

1. *Al-Mumāthalah* (sameness). This occurs when the number of the shares to be inherited by the newly deceased person, and the fractions denoting them, fit and agree with the share he or she was supposed to have inherited from the person who died first. Then, the distribution of the shares of the newly deceased person among his or her heirs is so simple that it requires no further action. This happens when the shares to be inherited by the heirs of the newly deceased person are the same as those due to him or her from the *tarikah* of the person who died earlier.

   For example, a person named 'Alī died, leaving behind his mother and two sons. One son, Zufar, died before 'Alī's *tarikah* was distributed. From 'Alī, who died first, his mother receives one-sixth and the 2 sons receive the remaining 5 shares. Since 5 is not divisible by 2 (the number of sons), 2 is multiplied by 6. From the new total (12), the mother receives 2 and each brother receives 5 shares. If one son (Zufar) dies before

'Alī's *tarikah* is distributed, and he leaves behind 1 daughter and 2 sons, their father's 5 shares can easily be distributed among them: each son takes 2, and the daughter receives 1.

2. *Al-Mubāyanah* (Contradiction). This occurs when the shares to be inherited by the heirs of the newly deceased person have nothing in common with the figures denoting the shares of the heirs of the person who died earlier; (i.e., there is no common divider with the total number of shares to be inherited by the earlier set of heirs). For example, modifying the above case slightly, let's say that Zufar left behind two sons. In this case, the 5 shares he leaves behind cannot be divided equally in sound numbers between his 2 sons. Thus the number of shares to be inherited by the son (2) is multiplied by the total (12). The new total (24) can be distributed evenly. The mother receives 4, the surviving son receives 10, and each of the 2 sons of the second dead man receives 5 shares ($1/2 \times 10 = 5$).

3. *Al-Muwāfaqah* (Agreement). This is the situation in which the figures denoting the shares due to the heirs of the newly deceased person have a common maximum dividing factor, with the total denoting the shares of the heirs of the person who died first. This has three possibilities: Cases like this: A man died and left behind his father (Khālid), his mother (Ruqayyah), and 2 daughters (Najwā and Salmā). Before the distribution of his *tarikah*, Salmā died. Khālid and Ruqayyah inherited one-sixth each from him, and his daughters inherited two-thirds. However, Salmā died before the distribution, leaving behind Khālid, Ruqayyah, and Najwā, all of whom should inherit Salmā's 2 shares. Of this 2, Ruqayyah receives one-sixth, and Khālid and Najwā share five-sixths. Each male receives twice the

share of the female (2 for the former, 1 for the latter, for a total of 3 shares). Since 2 is not divisible by 3, 3 is multiplied by 6 (the denominator of the total of the fractions denoting the shares). From the new total of 18, Ruqayyah receives 3, Khālid and Najwā share the balance of 15 (10 for Khālid and 5 for Najwā). Salmā's share (two-sixths from the first deceased) and the total (18) both have a common maximum factor of 3. Thus, the total number of shares is 54 (3x18).

The shares in the first stage are multiplied by 9, and the shares in the later case remain as they are. They have to be added, however, to the shares of those who are entitled to them among the first set of heirs. The mother receives 9 in addition to 3 from her latter inheritance as a grandmother, making a total of 12. The father receives 9 in addition to 10 from his latter inheritance as a father's father, making a total of 19. The surviving daughter, Najwā, receives 18 from the first inheritance, and 5 from her deceased sister. In all, she receives 23 shares.

The second possibility of this division is the same as the above, except that the surviving sister is a paternal sister. This does not change the amounts of the shares or anything else. The third possibility occurs when a woman dies and leaves behind her father, her mother, and two daughters. Before the distribution of the inheritance, a daughter dies, leaving behind her maternal grandfather (a mother's father), her maternal grandmother (a mother's mother), and her maternal sister. In this case, her maternal grandfather (a mother's father) receives nothing, as he is not on the list of legal heirs. Moreover, her sister is a maternal (not a paternal) sister. There is quite a difference in the status of those

two categories when it comes to distributing the inheritance.

Each of the above three possibilities is called *Ma'mūnīyyah*, for they are attributed to the seventh 'Abbāsid Caliph, al Ma'mūn Ibn Hārūn al Rashīd (ruled 198-218 AH / 813-833 AD). Following the suggestion of some of his advisors, al Ma'mūn appointed a young scholar named Yaḥyā Ibn Aktham as the judge (*qāḍī*) of Baṣrah, a position that also included many administrative responsibilities. As senior officials usually did, before going to Baṣrah to assume his position, Yaḥyā went to greet the Caliph and receive any important advice the latter might wish to offer. Apparently, the Caliph was surprised to see how young the new judge was.

To test his intelligence, the Caliph asked him to analyze this case. Someone died and left behind his parents and 2 daughters. However, the distribution of the *tarikah* was delayed until after a daughter had died. Yaḥyā, who was twenty-one years old, immediately asked: "O Commander of the Faithful. Was the person who died first a man or a woman?" The Caliph replied, "As you have asked the right question, you must know the correct answer." The Caliph sent him to Baṣrah to assume his responsibilities. Upon his arrival, Baṣrah's leading scholars were surprised at the appointment of such a youthful judge. They asked him: "How old are you, Your Honor?" He answered: "As old as 'Aṭṭāb Ibn Asīd was when the Prophet appointed him Governor of Makkah" (after the conquest of Makkah by the Prophet in Ramaḍān 8 AH.) They were so surprised that they were silent.

The distribution of the first *tarikah* in the *Ma'mūnīyyah* case is as follows: Each parent receives one-sixth, and the daughters receive two-thirds. As for the second case, the

mother has become a grandmother, and so receives one-sixth of the *tarikah* of her paternal grand-daughter (a son's daughter) who died later, which is 2 shares. The father has become a paternal grandfather (a father's father), who will share with his surviving grand-daughter (an agnatic sister of the deceased). It is better for him to share than to receive one-sixth of the *tarikah* or one-third of the balance.

This latter case starts from a total of 18. The grand-mother receives 3, the grandfather receives 10, and the surviving daughter (who has become a sister) receives 5 shares. By contrasting the share due to the deceased daughter from the first death (2) with the total in the latter case (18), we see that they have 2 as the common factor. So, 1/2x18x6=54. Finally, the mother receives from the first *tarikah* (1x9)+(3x1) as a grandmother in the latter case, which results in a total of 12. From the first *tarikah* the father received 1x9, and from the second *tarikah* he received 1x10 (his share as a grandfather), for a grand total of 19 shares. The surviving girl receives 2x9=18 (her share as a daughter) in the first *tarikah*, and 1x5=5 in the second *tarikah* (her share as an agnatic sister). Her total is 23 (12+19+23=54).

If the person who had died first had been a female, the grandfather in the second case would have been a maternal grandfather (a mother's father), who is not an heir. Thus in the second case, the surviving daughter would have been agnatic or a maternal sister of the dead daughter. This would have caused a different distribution of the shares, depending on whether the dead person in the first case was a man or a woman.

This incident reminds us of a story told about the awesome second ʿAbbāsid Caliph, al Manṣūr, the founder of Baghdad. When he assumed his post, he received a Persian delegation of senior personalities. The Caliph was surprised

that the delegation had made a youth, Iyās Ibn Mu'āwiyah, their spokesman, not realizing how able and how highly intelligent that young man was. It is related that al-Manṣūr was overheard remarking: "How foolish are these goat-bucks." He then asked Iyās how old he was, to which the young man replied: "As old as Usāmah Ibn Zayd was when the Messenger of Allah appointed him to lead an army including Abū Bakr and 'Umar." Al Manṣūr was highly impressed by Iyās, who was then eighteen years old, and admired him tremendously.

Let's return to our subject. The death of an heir before the distribution of the inheritance of the person who died first may result in four possibilities: that only 1 heir will die before the distribution of the inheritance of the person who died first. This is the most frequent case, and has been dealt with above; that more than 1 heir of the first deceased person will die before the distribution of the first *tarikah*, whether they all or only some of them are heirs of the first deceased person. This can assume ten probabilities, the most common case of which is, again, that case treated above; the third case is treated in relation to the second, just as the second was treated in relation to the first; and the fourth is to be treated in relation to the third in a similar fashion.

Let's now illustrate all this: A man died leaving behind his wife, his father, his mother, and 2 daughters. Before his *tarikah* could be distributed his father died, leaving behind his father (a father's father of that man), as well as his own wife, his two son's daughters, and a full brother. Then, the mother of the man who died first died, leaving behind her daughter and 2 son's daughters. Next, one of the 2 daughters died, leaving behind her agnatic sister and her husband.

The first set of heirs consists of the wife (one-eighth), the 2 daughters (two-thirds), the father (one-sixth), and the

mother (one-sixth). The total is $1/8+2/3+1/6+1/6=27/24$. Thus 27 is the total of the shares inflated from 24. As it is not divisible by 6, which would provide non-fractionated figures for each parent's share, 27 is multiplied by 6. The new total (162) provides sound shares. The share of each heir is then multiplied by 6. The wife receives $3x6=18$, the 2 daughters receive $16x6=96$, the father receives $4x6=24$, and the mother receives $4x6=24$. Thus, $18+96+24+24=162$.

Add what the survivors get from the subsequent death: the mother receives 27, each daughter receives 56, and the brother receives 5 shares. Then the mother died, leaving behind her mother, two son's daughters, and a paternal uncle. The three sets of heirs combine their inheritance, and the distribution among the heirs, leaving out those who died, is achieved by multiplying $6x54=324$. We then multiply the shares of those surviving from the earlier two sets of heirs by 2, and those who survived from the third set by 9. Thus the earliest wife receives 36, each daughter receives 130, the brother receives 10, the mother in the third set receives 9, and the uncle receives 9.

Then a daughter died, leaving her husband, her mother, and her sister. The husband receives one-half, her mother receives one-third, and the sister receives one-half. The total is $3+2+3=8$. The four sets of heirs combined, and each can get his or her share in a sound figure from a total of 296. Each surviving heir from the first three sets has his or her share multiplied by 4, and whoever has a share in the fourth set has it multiplied by 65. So, the first wife (a mother in the fourth stage) receives 274, the surviving sister receives 715, the brother receives 40, the mother in the third stage receives 36, same as her uncle, and the husband in the fourth stage receives 195 shares.

As a matter of fact, there are other similar complex probabilities. The above is enough to illustrate the complexities which our early scholars sought to disentangle.

AL-KHUNTHĀ AL-MUSHKIL (HERMAPHRODITES)

It is related that Imām Alī Ibn Abū Ṭālib was faced with the case of a man who was married to his cousin (the daughter of his paternal uncle). The (supposed) female cousin had a female slave, and she slept with her supposedly as her master. She, as if she were a man, copulated with her using something resembling the male organ (which she had in the front) as well as the female organ. The brilliant Imām, recalling that Eve was created from one of Adam's ribs, and thinking that therefore every man should have only twenty-three ribs (women have twenty-four), he sent his client Qunbur to count that person's ribs. Qunbur did, and reported that the person concerned had only twenty-three ribs. The Imām then ordered that person to dress as a man.

Such a person is called a *khunthā* (a hermaphrodite), for he/she has both male and female organs through which he/she can urinate. This is the definition and view of Imām al Shāfi'ī, Imām Mālik, Imām Abū Ḥanīfah, as well as those of the leading disciples of Imām Abū Ḥanīfah. However, Imām Mālik regards the growth of a beard as signifying that the person in question is a man, and the growth of breasts that contain milk as signifying that the person in question is a woman. Imām Abū Ḥanīfah shares this opinion, but Imām al Shāfi'ī does not.

The word *mushkil* means "confusing" or "perplexing." We are here concerned with determining the share of inheritance due to such a person, because so much depends on the correct gender of a *khunthā* who is an offspring, a sibling, or an offspring of a paternal uncle (the father's

brother). Such confusion does not occur in the case of a father, a mother, a grandfather, or a grandmother. Such confusion, however, is usually removed when a *khunthā* attains the age of adulthood, for the person will either begin to emit sperm or to menstruate. Yet, it is said that the confusion might persist beyond that point.

If all persons interested in a case of inheritance agree to regard the *khunthā* as a male or a female, treating him or her accordingly, letting him or her inherit on the agreed basis and then distributing the *tarikah* among themselves according to that person's agreed gender, there is no problem. If this is not the case, if the *tarikah* must be distributed before the person has reached puberty, or if his/her correct gender is still not clear even after puberty has been reached, a question arises as to what should be done with the *tarikah* until this matter is clarified.

The *tarikah* should be distributed, nevertheless, according to the formula that gives the heirs, including the *khunthā*, lesser shares, pending full clarification of the situation. Thus, in a case of two sons, one of whom is definitely a male and the other is a *khunthā*, the male son receives one-half, and the other, assuming that it is a sister, gets one-third. One-sixth should be set aside, pending until a time when the true sex of the confused child is determined. If it is proven that he is a male, he gets the pending one-sixth. Otherwise, the pending one-sixth goes to the clear son.

In a case of a husband, a mother, and a sibling who is a *khunthā*, the sibling (if considered female) receives one-half as an agnatic sister, whereas the mother receives one-third and the husband receives one-half at any rate $(1/2+1/3+1/2=8/6)$. The total of the shares is inflated from 6 to 8. If the sibling is considered male, the husband receives one-half and the mother receives one-third, making a

total of $1/2+1/3=5/6$. The boy, who is then a brother of the deceased, receives the balance of one-sixth. Therefore, classifying the *khunthā* as a male benefits the parents, who then receive their respective full shares unaffected by inflation. If the *khunthā* is classified as a female, the real value of the parents' shares is reduced. If the *khunthā* is classified as female, (sister), she receives a three-eighths share, which is far greater than one-sixth. If the *khunthā* is a child of the father's brother, it receives nothing in view of the fact that it could be a girl, a daughter of the paternal uncle (a father's brother), and therefore is not entitled to any share of the inheritance.

Let's have another example. A woman died, leaving behind her husband, her mother, two maternal siblings, and an agnatic sibling who is a *khunthā*. If the sibling is a male, he is a paternal brother. If the sibling is a female, she is an agnatic sister. In the first case, he receives nothing, because he is an *'aṣabah* and those with fixed shares (who have been just mentioned) inherit the entire *tarikah*. The husband receives one-half, the mother receives one-sixth, and the maternal brothers receive a full one-third $(1/2+1/6+1/3=1)$. Yet, the agnatic sibling shares with the maternal brothers, as this is a *ḥajariyyah* case. If, on the other hand, the sibling is a female, she receives one-half. As a result, the total is inflated from 6 to 9, thus reducing the real value of the shares received by the husband, the mother, and the maternal siblings.

The above ruling represents the Shāfi'ī views. The Ḥanafī school rules that the *khunthā* should be treated in such a way that he/she receives nothing or at least the lesser amount, and that nothing should be kept pending. The Mālikī school gives the *khunthā* one-half of the total it receives if the *khunthā* is considered male, and one-half of that which it receives if considered female. Thus, in the

case of two children inheriting from their father or mother, the male son receives one-half, at first, as if the other child (the *khunthā*) is a male son. Yet this other child is to be given one-third, as if he/she is a daughter sharing with her brother. Then they share the remaining one-sixth. The final result is that the male son receives 7 of 12 shares, and the *khunthā* receives 5. The Ḥanbalī and the Shāfiʿī schools rule thus when there is no anticipation of determining the *khunthā*'s true sex. But if there is a hope that the gender will be clarified eventually, they follow the ruling of the Mālikī school.

Notes:
The *khunthā* has one of five possibilities:
1. Whether the *khunthā* is considered a boy or a girl makes no difference, as in the case of someone who died leaving behind the father (one-sixth), his mother (one-sixth), a daughter (one-half), and a son's child who is a *khunthā*. The total is five-sixths. It then makes no difference whether the *khunthā* receives the remaining one-sixth as a brother's son, an *ʿaṣabah* with no fixed share, or as a brother's daughter to make a two-thirds by joining his/her share with that of the daughter.
2. It may be that being classified as a male is more beneficial, as in the case of a daughter and a son's child who is a *khunthā*. As a boy he receives the balance (one-half) after his aunt receives her one-half. As a girl, she receives one-sixth to make two-thirds with the daughter's share, even though she receives a little more from proportionally sharing the balance with the daughter.
3. It is better for the *khunthā* to be treated as a girl but better for the other heirs that it be a boy. This is illustrated in the case of a husband, a mother, and an

agnatic sibling of undetermined sex. The husband receives one-half and the mother receives one-third, for a total of five-sixths. If the *khunthā* is treated as a boy, he receives the balance (one-sixth) as an agnatic brother. If the *khunthā* is treated as a girl, she receives one-half as an agnatic sister. The resulting total is $1/2+1/3+1/2=8/6$. So, the *khunthā* has to be treated as a boy to receive the lesser share, but the other heirs are to be treated as if it is a girl, so as to receive their lesser shares, pending the solution of the problem.

4. The *khunthā* should be treated as a male, when it is a child of an agnatic brother. For, if the *khunthā* is considered a male, he inherits as a paternal nephew (a brother's son). But if the *khunthā* is treated as a girl, she will be a paternal neice (a brother's daughter) and thus is not an heir.

5. In the opposite of this last situation, like the case of a husband, a full sister, and a paternal *khunthā* sibling. If the *khunthā* is considered male he receives nothing, because those with fixed shares (the husband receives one-half and the full sister receives one-half) inherit the entire *tarikah*. On the other hand, if the *khunthā* is to be treated as a female, she will be a paternal niece (a brother's daughter), and thus will receive one-sixth to make a total of two-thirds with the full sister (according to some jurists who count her as a potential heir). The case then is inflated to 7 $(1/2+1/2+1/6=7/6)$.

AL-MAFQŪD (THE MISSING AGENT IN INHERITANCE)

Al-Mafqūd means "a missing person." Such a person can be further classified as a *wārith* (an heir of the deceased) or as a *muwarrith* (a person with some wealth who has been missing for a considerable time) and whose heirs

are waiting impatiently for their shares of his wealth. Let's start with the case of a missing heir.

A-THE CASE OF A MISSING HEIR

A missing person is someone who has been away for so long that no one knows whether he or she is still alive. He may have traveled to a far destination, after which nothing was heard from or about him, as is the case with those who face disaster at sea and may or may not have been rescued. In such a situation, the matter usually was raised before the court. If the court ruled that the missing person should be considered dead on the ground of advanced age, for example, or four years had passed and no information had been received from or about the person, some say that the *tarikah* can be distributed.

According to the Ḥanbalī school, his *tarikah* should be distributed among the heirs, subject to the possibility that he may be found later, in which case the ruling has to be reversed. If his survival is assumed, the missing heir should be assigned the lesser share in case of the probability of two measures. The difference between the amounts of the shares based on the two probabilities is kept aside, pending the future resolution of this case. In case of the probability of being blocked by a closer heir, the missing party should be given nothing. If the missing heir is not blocked in all probabilities and his or her share does not change, then his or her share should be totally given.

Let's illustrate this. Someone died leaving his wife, his mother, a paternal brother, and a missing full brother. Whether or not the missing full brother will return, the wife receives one-fourth of the *tarikah* because her share cannot be affected by the missing sibling. However, the mother's share is one-third if the missing man is really dead, and is one-sixth if he is alive, because when he and the paternal brother join together, they reduce her share to one-sixth.

Thus the total number of shares is 12, of which the wife receives 3 in any case, whereas the mother receives one-sixth (based on the lesser probability). The paternal brother receives nothing, in view of the probability that the full brother is still alive, in which case the latter blocks the former. The remaining 7 shares are set aside pending the future resolution of the case. If it turns out later that the full brother is alive, he receives those 7 shares. If it turns out later that he has died, the mother should get 2 more (the balance of her one-third) and the paternal brother receives the remaining 5 shares.

Another example is that of a husband, 2 paternal sisters, and a missing paternal brother. The husband receives one-half, and the 2 paternal sisters receive two-thirds (assuming that the missing brother is dead). The total is inflated to seven-sixths, because $1/2+2/3=7/6$. Assuming that the missing paternal brother is alive, he makes his sisters an *'aṣabah* and shares with them (his share is twice theirs). The total shares in this case are 8. To combine the two probabilities, 7 is multiplied by 8 to get 56.

We have to treat the heirs on the basis of the two probabilities, and therefore give them the lesser chance as a precautionary measure. The lesser fortune of the husband results from the assumption that the paternal brother is dead. Therefore, he receives $3x8=24$. The lesser fortune of the two paternal sisters is to assume that he is alive, for in that case each receives $1x7=7$. The total of $7+7+24=38$. The remaining 18 shares are kept in escrow for the benefit of the husband, the 2 sisters, and the missing brother. If it transpires that the missing brother is dead, the husband will receive his full share, and the escrowed amount will be given to the sisters. If, on the other hand, the missing brother is determined to be alive, the husband will receive 4

shares of the escrowed amount, and the brother will receive 14 shares.

Another case is that of a full brother, the father's father, and a missing paternal brother. Here, the father's father is the sole fixed-share heir, and thus he receives what is better for him (either one-third of the *tarikah* or he shares with the siblings). If the paternal brother is alive, his share is counted as against the paternal grandfather's (the father's father) interest, although he is blocked by the full brother. In this case, the paternal grandfather's (the father's father) receives one-third, and the full brother receives the remaining two-thirds.

If the paternal brother is considered dead, the father's father will receive a larger share, for he will receive one-half of the entire *tarikah* as a result of simple sharing. If it is not known whether the missing paternal brother is alive or dead, the full brother receives 3, the father's father receives 2, and the remaining one share is held in escrow until the status of the missing brother is known. However, the father's father and the full brother may agree between themselves on how the remaining one-sixth share should be divided.

B-AL-MAFQŪD, A MISSING PERSON WITH SOME FORTUNE LEFT BEHIND

No one can be inherited during his or her lifetime. Therefore, if someone is missing, his properties should not be touched until it is justifiably believed that he or she has died, or until a court has ruled that he or she is to be considered dead. For example, in the case of a relative who is missing but he was a passenger in an airplane which met a disaster, his or her heirs may claim their inheritance even when his remains could not be identified in the wreckage.

But suppose that the relative is missing due to a more ambiguous disaster, as in the case of being a passenger on

board of a ship that sank while still close to the shore. Some
survivors, perhaps including the relative, were picked up by
a passing boat and others managed to swim ashore. How-
ever, the relative could not be located among these survi-
vors. What is the correct ruling in such a case? He could
still be alive. Another example is that of a relative living in
a house that was destroyed by fire or an earthquake. His
survival is uncertain, as he was not found by the fire bri-
gade, nor were his remains found, recognized, or identified
among the charred remains.

In such doubtful cases the Muslim court, or in its ab-
sence any trusted body (e.g., Muslim councils set up in the
West), may rule, according to certain guidelines, that the
missing person should be considered dead. The question is:
What are these guidelines? The court may so rule when the
circumstances make it very likely that the person has died.
Suppose, in a similar case, that the relative was a passenger
in a train that collided with another train near a jungle.
Some passengers died, others were wounded, and some ran
into the jungle. The relative could not be found among the
survivors or the wounded, and it was probable that he or
she escaped into the jungle but, although still alive, has lost
his or her way.

In these doubtful cases, the jurists differed. The better
Shāfi'ī, Ḥanafī, and Mālikī opinion is that the judge should
rule according to what is most likely in such a case. Other
jurists said there should be a period of waiting, during
which the distribution of the missing person's inheritance is
delayed until he or she reaches the age of eighty. Some
other jurists said the period of waiting should be extended
until he or she reaches the age of ninety. Still others said
the waiting period should be extended until he or she
reaches the age of one hundred and twenty.

However, one strongly feels that such lengthy waiting period is extreme. The heirs may include an old father, a very old mother, or an aging grandfather. Thus we are inclined to follow Imām Ibn Ḥanbal, according to which the waiting is extended until the missing person reaches the age of ninety, in the case of a person who is to be inherited has gone away on business or for pleasure. Yet, when the circumstances make it more likely that the person to be inherited has died, such as in a boating accident or he simply left home and did not return, the period of waiting should be shortened. We may now say that it should be only four years, in view of our very advanced means of communication and speedy means of information.

INHERITANCE AND PREGNANCY

In case someone dies leaving among his possible heirs a fetus, it is better to delay distributing the inheritance until after the delivery, for this event clarifies whether the infant will affect the other heirs and their shares. So much depends on the successful delivery and the gender of the one (or more) infant. A miscarriage, even if deliberately induced, does not affect the shares, either by blocking or reducing the shares of the other legal heirs. Once the infant has been born alive, even if it dies soon thereafter, it affects the other heirs in many ways.

If the heirs are in a hurry to distribute the inheritance before the delivery, the distribution has to be based on the lesser favorable probabilities, and the amounts saved must be kept aside pending the outcome. It should be assumed that the infant will be born alive, and the following assumptions should be taken into consideration:

1. In the case of a successful delivery, there will be inheritance and blockage when the pregnant woman is the widow of the deceased.

2. The birth of a boy will have an effect when the pregnant woman is the wife of the paternal grandfather (a father's father), whose child has to be a male in order to inherit as a paternal uncle (a father's brother), or the wife of a brother whose only male child can inherit as a paternal nephew (a brother's son). If a girl is born, she will not be a legal heir, for she will be either a paternal aunt (a father's sister) or a paternal neice (a brother's daughter).

3. If a girl is expected and the pregnant woman is the wife of the deceased's father, and there is a surviving husband and a full sister to inherit the entire *tarikah* (each is entitled to a one-half share), the girl will be a paternal sister with a fixed share (one-sixth which, when joined with that of the full sister, will result in a two-thirds share). Therefore, the total has to be inflated by one-sixth for her sake. If a boy is expected, he will be a paternal brother and an *'aṣabah*. As such, he will receive nothing after those with fixed shares have inherited the entire *tarikah*.

4. The pregnancy can be of no consequence in all probabilities, when the expectancy is of a relative who is blocked by a living heir. An example would be the pregnancy of the mother of the deceased if the latter has left behind a son, for the infant will be a sibling who is blocked by the son. The pregnancy is of no effect on the mother either, for her share is already reduced from one-third to one-sixth by the presence of a son.

5. Those who will inherit determined shares in all probabilities should get their right without a delay. Those whose fixed shares may vary receive their shares on the basis of the lesser probability. Let's illustrate by some examples. A man died leaving be-

hind his pregnant wife (one-eighth, there is a sur-
viving child), his mother (one-sixth, regardless if the
infant is born alive or if it is male or female), and a
son. Yet the son's share depends on several factors:
whether the infant is born alive, how many are born,
and the infant's gender. So, the son may wait until
the infant is born or inherit according to the lesser
probabilities. In this case, moreover, the pregnant
wife could be another wife who shares one-eighth
with the wife who is not pregnant.

6. If the heirs are not entitled to fixed shares but are all
   'aṣabah, the better opinion of the Shāfi'ī school is that
   they should inherit nothing until the pregnancy has
   ended (either by a successful delivery or by miscar-
   riage) and the number and gender of the delivered ba-
   bies have been revealed. Imām Abū Ḥanīfah and some
   Mālikī jurists hold that the *tarikah* may be distributed
   on the assumption that four infants will be born and
   that the gender is of the lesser favorable condition for
   the heirs. Other jurists, including Imām al Layth Ibn
   Sa'd and Imām Abū Yūsuf, prefer to assume that only
   one child will be born, which is usually the case.

   Let's recall that there is no effect at all if the preg-
   nancy ends in miscarriage or abortion. Inheritance de-
   pends on the successful delivery of a live infant, even if
   it should die soon thereafter, but after showing that it
   was born alive, either by screaming, sneezing, yawn-
   ing, eye-blinking, or suckling. The Ḥanafī school,
   however, does not stipulate a successful live birth, for
   it counts a partial live birth as a full one.

7. If a man died leaving a son and a pregnant wife, the
   Mālikī school insists on postponing the distribution of
   the *tarikah* until after delivery. The Shāfi'ī school
   agrees to advance to the wife one-eighth of the *tarikah*,

but do not advance anything to the son until after delivery. The Ḥanbalī school also advances one-eighth to the wife and one-third of the balance to the son, on the assumption that twin sons will be born and also pending on what the delivery will reveal. The Hanafī school advances one-eighth to the wife and one-half of the balance to the son, on the assumption that a son will be born.

8. If a man died leaving behind his parents and a pregnant wife, the *tarikah* may be partially distributed on the assumption that several girls will be born, as this assumption grants these heirs the lesser probability pending what the delivery will reveal. There are three probabilities: there might be no pregnancy or there might be a miscarriage. In either case, the wife receives one-fourth, the mother receives one-third of the balance, and the father receives the remaining balance. (This, as we may recall, is one of the two *Gharrawayn* cases that were settled by Caliph 'Umar.); if the pregnancy is successful, whether it results in a son or a daughter or twins of both genders, the total number of shares will be 24 without inflation; and if the pregnancy results in identical female twins, it will be inflated into 27, becoming a *minbarīyyah* case.

Returning now to the original case consisting of a pregnant wife (one-eighth), a father (one-sixth), and a mother (one-sixth), the lesser favorable treatment of the heirs is to assume that two daughters will be born. Together, they are entitled to a two-thirds share. The total is $1/8+2/3+1/6+1/6=27/24$. The total is therefore inflated to 27. The wife receives 3, the mother receives 4, and the father receives 4, for a total of 11 shares. The remaining 16 shares are kept pending the outcome of the delivery. The

Ḥanbalī school rules the same way in this case, but the Hanafī school gives the wife 3 shares, the mother and the father 4 each, and leaves the remaining 16 pending with no inflation. The Mālikī school postpones distribution until after delivery.

A deceased man is survived by his pregnant mother and his father. His mother is treated less favorably on the assumption that several children, who will be the deceased's siblings, will be born. In this case, she receives one-sixth (there is more than one sibling). The father will receive a larger share if only one child is born, because he will be entitled to the balance as an *'aṣabah*. As a precautionary measure the mother receives one-sixth, the father receives two-thirds, and the remaining one-sixth is held pending the outcome of the pregnancy. The ruling of the Ḥanbalī school is the same as that of the Shāfi'ī school, but the Ḥanafīs give the mother one-third and the father two-thirds, and requires a guarantor in case more than one child is born. The Mālikī school insists on waiting until after the delivery.

PREGNANCY RESULTING FROM MISTAKEN IDENTITY OR AGGRESSION

Suppose a married woman conceives after a stranger mistakenly slept with her thinking that she was his wife, or if she has been raped. And suppose further that, after a complete period of pregnancy has passed (no less than 6 months but not more than 4 years), she gave birth to a child (who may belong to her husband, or to the stranger, or to the rapist). The jurists rule that the child's paternity must be determined by experts who establish the blood relationship between people by such means as studying the traces their feet leave on the sand. In modern times, however, we have easier and more reliable medical methods of identification. In the case of inheritance, however, if the identity of any set

of heirs remains doubtful, the final distribution of shares must wait until the paternity of any member of the group whose identity is so doubtful has been established. If it is decided to proceed with the distribution of the *tarikah* immediately, the basis of the lesser probabilities should be followed.

THE INHERITANCE OF PEOPLE WHO DIE TOGETHER

Zayd Ibn 'Umar Ibn al-Khaṭṭāb, a good righteous man, was fatally hit by a stray arrow while crossing a street to make peace between two disputing parties. About the same time, sad voices were heard coming from the living quarters of his mother, Umm Kulthūm Bint Imām 'Alī, the grand-daughter of the Messenger of Allah, mourning her death. No one knew which person died first. In this case, the Companions of the Prophet ruled that neither should inherit from the other. This became the rule whenever people who could inherit from one another died more or less at the same time and the exact moment of their deaths could not be ascertained. This rule is applied especially in such disasters as the sinking of a boat or that of a fire or an earthquake destroying a building, in which the people affected are killed.

The above ruling applies in cases of group deaths, when the exact time of the death of each member of the group, in relation to each other, is not known. This is the usual case with the accidents mentioned above as well as with train collisions or severe car accidents. This ruling is derived from the conditions stipulated for inheritance, which are:

1. Full knowledge of the factor on which inheritance is based, like a conjugal or a blood relationship, whether the person is the husband or wife of the de-

ceased, or his or her mother, or the son or daughter or the son's son and so on.

2. Certainty that the person to be inherited has died, or the ruling of the court that such a person is to be considered dead (e.g., the earlier-mentioned case concerning a missing person).

3. Certainty that the person who is to inherit has survived, even for a short time, after the death of the person being inherited. Therefore, a baby born within a few second after the death of its father inherits from its father. This is also the case if it is born within 4 years of the death or disappearance of its father. It takes its due share of the inheritance. (According to the jurists, a period of 4 years is the maximum length of the period of pregnancy, and its minimum is 6 months.)

An interesting question arises here. Suppose some relatives who inherit from each other died in places separated by huge distances, such as in China or Malaysia and Morocco or Europe but, according to local time, at roughly the same time. Say each one died at noon or at sunset or at 10 AM or 11 PM in their respective localities. Our scholars replied to this question as follows: "The one in the West inherits from the one who died in the East, because the sun reaches the middle of the sky in the East before doing so in the West."[21]

Another interesting question raised by our scholars was this: Suppose that two persons who are potential heirs of each other die in widely separate localities at the time of sunrise or sunset in their respective places? They

---

[21] This ruling was made before the invention of modern means of communication: telephone, telegram, radio, telex, etc.

ruled that "the one in the West is likely to inherit from the one who died in the East, for the sun rises and sets in the East often before doing so in the West. But this should be ascertained, for it is not always necessarily so."

For the sake of greater clarity, let's repeat. When some people die together at the same time, neither inherits from the other. There is no dispute over that. However, if they died one after another but could not be identified, or if they were identified but then the identification was forgotten or confused, the ruling is the same, according to Zayd Ibn Thābit and the schools of Imām Mālik, Imām al Shāfi'ī, and Imām Abū Ḥanīfah. According to Imām Alī and Imām Ibn Ḥanbal, they inherit the old property of each other but not the fresh earning.

Here is an example. A married couple died in a disaster one after the other, and no one knows who died first. They left behind one son. Each parent had $40. The husband, if his wife died first, inherits one-fourth of his wife's fund ($10), and her son inherits the balance ($30). If the wife survived her husband even for a brief moment, she also inherited one-eighth of his fund ($5), leaving $35 to their son. So their son has inherited $30+$35=$65. The $10 the husband could have inherited from his wife, and the $5 the wife could have inherited from her husband, are not distributed for the time being, because they came accidentally to each from the other and no one can inherit from himself or herself.

Since neither should inherit from the other if the exact order of death cannot be determined, the same ruling should apply when it is certain that two relatives who could inherit from each other died at the same time.

DHAWU AL ARḤĀM[22]

This chapter is divided into three parts: The definition of the term, the circumstances in which the *dhawu al arḥām* may inherit and the related dispute, and the manner of their inheritance.

Who are the *dhawu al arḥām*? Linguistically the term *raḥīm* (pl. *arḥām*) means all of a person's relatives, whether they may or may not inherit from each other. It also signifies a blood relationship. In the study of inheritance, however, the term means a blood relative who cannot inherit. They are four categories:

1. The *non-inheriting* male and female descendants: the children of the daughter of the deceased, and the children of his or her son's daughter and their male and female descendants, no matter how down they may descend.
2. The *non-inheriting* relatives: the non-inheriting father's fathers and grandmothers of the deceased, no matter how high they may go up in the ancestral line.
3. The *non-inheriting* relatives related to the deceased through his or her parents: the children of his or her sisters, the brothers' daughters, and the descendants of the maternal siblings, no matter how down they may go.
4. Those related to the deceased through his or her grandparents: that is: his or her father's maternal uncles, the father's female siblings, the father's brother's daughters, the mother's brothers and her cousins, and their descendants, no matter how far down they may descend.

---

[22] *Dhawu 'l arḥām* is the accurate way of spelling the phrase, as the alif "a" of the definite article "al" is to be omitted as a *hamzat al waṣl* (an unpronounced glottal stop). In the West, however, the title may be written *dhawu al arḥām*, to make it easier to our brethren who are not familiar with Arabic. In any way, the vowel "u" in *dhawu* has to survive.

There is a dispute whether these relatives may or may not inherit and, if they can, how they inherit. We will study these themes soon. In the meantime, let's bear in mind the following points:

i. All jurists who say that these relatives (called *dhawu al arḥām*) can inherit agree that when any male or female relative in this category is alone, he or she inherits the entire *tarikah* in the absence of any legal heir entitled to a fixed share, or the balance of the *tarikah* remaining after those entitled to fixed shares have taken them.

ii. If there is one or more than one heir entitled to a fixed share, there are two opinions:

First: The *tarikah* or its balance, whatever the case may be, should be distributed evenly among them, with no discrimination based on gender or the close degree of relationship to the deceased, near or distant.

Second, according to the Ḥanbalī school and the better Shāfiʿī and Mālikī opinion, substitution should be used. This procedure assumes that each member of this group replaces the relative through whom he or she is related to the deceased. Exceptions are the mother's brothers and her sisters, who assume the mother's status, and the father's sisters and his maternal brothers, who assume the status of the father. Thus, the mother's maternal uncles and her mother's sisters assume the status of the maternal grandmother (a mother's mother), and her paternal uncles and paternal aunts assume the position of the maternal grandfather (a mother's father). The father's maternal uncles and his mother's sisters assume the status of the father's

mother, and his paternal aunts assume the position of the father.

Therefore, the *tarikah* is distributed among them as grandfathers and grandmothers, and the wealth is distributed between them as if it were the father who had died. Accordingly, the mother's brothers and sisters assume the status of the grandmother, who is her sister, and every paternal uncle and aunt assumes the status of the paternal grandfather (a father's father), who is her brother. Thus, in the case of the father's paternal sisters and maternal uncles, the *tarikah* is distributed among them as if the father had died. If there are also any mother's brothers and sisters, the maternal relatives take one-third and the paternal relatives take the remaining two-thirds.

Whenever two of these categories exist and one is closer to the deceased, he or she is given preference. So, the son of the paternal great-grandson (a son's son's son) is given preference over the son of the maternal grand-daughter (a daughter's daughter). If they are equally close to or equally distant from the deceased, then the *dhawu al arhām* inherit as if the deceased was actually the relative through whom they are inheriting. The *tarikah*, or its balance after the conjugal share has been deducted, should be distributed among them on that basis.

The conjugal share should not be affected by a daughter's child or by the *'awl* procedure. Yet if there is a case of blockage, it must apply. Let's have several examples:

i.   A person died, leaving behind a paternal great-grand-daughter (a son's daughter's daughter) and a maternal great-grandson (a daughter's daughter's son). The first receives the *tarikah*, as she is closer to the dead person.

ii. A mother's mother's father and a mother's father's mother. The first receives the inheritance for the same reason.

iii. A son's son's daughter's daughter, a daughter, and a son of another son's daughter. The first receives one-half of the *tarikah*, and the other one-half is divided equally between the other two persons according to the Ḥanbalī school. According to the Shāfiʻī school, however, this one-half should be divided into three parts, two-thirds of which should be given to the male and one-third to the female.

iv. A maternal brother's son, and a maternal brother's daughter. They share it equally.

v.   A full brother's daughter, a paternal brother's daughter, and a maternal brother's daughter. They each assume the status of their respective father: a full brother, a paternal brother, and a maternal brother. The second is blocked by the first, and thus receives nothing. The third receives one-sixth, and the first receives the balance as an *ʻaṣabah*. (She will do better by giving the paternal brother something, say, a one-sixth, as a gift.)

vi. A mother's full brother, a mother's paternal brother, and a mother's maternal brother. Substitution transforms them into, respectively, a full brother, a paternal brother, and a maternal brother. The second is blocked by the first, the

third receives one-sixth, and the first receives the remaining five-sixths.

vii. A mother's full sister, a mother's paternal sister, and a mother's maternal sister. Substitution transforms them into, respectively, a full sister, a paternal sister, and a maternal sister. The first receives one-half and the second receives one-sixth, which makes a total of two-thirds when combined with the first relative's share. The third receives one-sixth as her fixed share. The balance is divided among them proportionately, with the result that the first receives three-fifths, and the second and third receive one-fifth each.

viii. A mother's full brother, a mother's full sister, a mother's paternal brother and paternal sister, a mother's maternal brother, and a mother's maternal sister. The paternal mother's brother and sister receive nothing, as they are blocked by the first male substitute. The third couple receives one-third to divide equally between themselves, according to the Ḥanbalī school. But according to the Shāfiʿī school, the male receives double the amount received by the female. The balance of two-thirds goes to the first couple and, according to the Ḥanbalī school, it is to be divided into two equal halves. However, the female receives half the share of the male according to the Shāfiʿī school.

ix. A father's full sister, another father's full sister, 2 father's paternal sisters, and 2 father's maternal sisters. The same analysis made in the immediately preceding case applies here.

x.   A father's full brother's daughter, a father's paternal brother's daughter, and a father's maternal brother's daughter. Substitution transforms them, respectively, into a father's full brother, a father's paternal brother, and a father's maternal brother. The third is not an heir and therefore is dropped. The second is blocked by the first, and so the first relative receives the entire inheritance.

xi. A maternal brother's daughter and a father's full or paternal brother's daughter. Substitution transforms them into, respectively, a maternal brother, and a father's full or a paternal brother. Therefore, the maternal brother's daughter receives one-sixth, and the father's agnatic brother's daughter receives the balance of five-sixths.

xii. A mother's full sister, a mother's paternal sister, a mother's maternal sister, a father's full sister, a father's paternal sister, and a father's maternal sister. Substitution transforms them into, respectively, the mother and the father. So, the maternal relatives receive one-third, and the others receive the remaining balance, two-thirds.

xiii. A full sister's son, a son of another full sister, 2 sons of 2 maternal sisters, and a mother's mother's sister. Substitution transforms them, respectively, into 2 full sisters, who receive two-thirds; 2 maternal sisters, who receive one-third; and mother's mother, who receives one-sixth, $2/3+1/3+1/6=1\ 1/6$.

xiv. A mother's father, 2 daughters of 2 maternal sisters, a daughter of a full sister, and a

daughter of a paternal sister. Substitution transforms them, respectively, into a mother, 2 maternal siblings, a full sister, and a paternal sister. If there is a spouse (e.g., a wife, a daughter's daughter, or a sister's daughter), the wife receives one-fourth, and the balance is either distributed equally, according to the better opinion, or on the basis of the assigned fixed shares.

xv. A husband, a daughter's daughter, a mother's sister, and a father's brother's daughter. The husband receives one-half, and from the balance the daughter's daughter receives one-half, the mother's sister receives one-sixth, as if she is the mother, and nothing remains for the father's brother's daughter, as she is here *'aṣabah*. It becomes like a case of a husband, a daughter, a mother, and a father's brother.

In this process of substitution, if a substituted category blocks another in the ordinary situation, the blockage also should apply here, and each one takes the share assigned to the heir represented by the substitute. There is an exception, however: substitutes representing a maternal sibling should share equally, whether they are all males or females or mixed. That is so although the maternal sibling, should he die, his children share his or her *tarikah*, on the basis of the male receiving double the female.

In contrast to this ruling of substitution, Imām Abū Ḥanīfah and some Shāfiʿī authorities classify *dhawu al arhām* into four classes, based on the degree of their closeness to the deceased: 1-those related to the deceased through the descending generation; 2-those related through the ascending generation; 3-those related through the sis-

ters' children, the brothers' daughters, and the sons of the
maternal siblings; and 4-those related through the mother's
brothers, the father's sisters, the father's maternal uncles,
the father's brother's daughters, and all those related
through them.

From the above, it is abundantly clear that the term
dhawu al arḥām does not include those related through the
conjugal bond; namely, one's husband or wife. Exceptions
are when one's spouse happens to be one's blood relative,
such as a wife who is also the daughter of the husband's
father's brother, and a husband who is a cousin of his wife.
In such a case, the spouse takes the fixed share due to him
or to her in that capacity, as well as whatever is due to her
or to him by virtue of being a member of the *'aṣabah*
group.

Now we come to the inheritance of *dhawu al arḥām*
and the inheritance they may receive. The probability
that the *dhawu al arḥām* may receive part or all of the
deceased's inheritance is related to the question of what
to do with the *tarikah,* or the remaining part of it, when
the deceased is not survived by any qualified heirs, or he
or she has some fixed-share heirs who do not exhaust the
tarikah.

The Ḥanafī and Ḥanbalī schools rule that if there is
something left over after the fixed-share heirs have been
paid, it should be distributed among the heirs proportion-
ately at the ratio of their shares to the *tarikah*. An exception
is made for the spouse, whether the husband or the wife, as
neither receives any part of that balance unless he or she
happens to be an *'aṣabah*, such as a spouse who is the son
or the daughter of one's paternal uncle (a father's brother).

The Mālikī school rules that if no heir can be found to
inherit the *tarikah* or take the remaining balance after the

fixed-share heirs have taken their shares, the *tarikah* should be given to the state treasury (*bayt al māl*), regardless of whether or not it is organized efficiently and fairly. The better-known opinion of the Shāfi'ī school is the same as that of the Mālikī school just mentioned, but some Shāfi'īs say that in the absence of any heir as well in the case of a remaining balance, nothing should be sent to the treasury unless it is well organized and managed fairly. If this is not the case, or there is no Muslim treasury at the time of a Muslim's death (as in the West today), the entire *tarikah* or its remaining balance should be distributed proportionately among the heirs according to the ratio of their shares received. Again, the spouses are excluded. If there is a well-organized Muslim body, like the Muslim councils in some Western countries, this payment may be given to them.

MANNER OF THE DISTRIBUTION OF THE RETURNED *TARIKAH*, IN FULL OR IN PART

Sometimes the returned *tarikah* or its balance has to be distributed. The ruling in this case depends on whether or not the heirs include a spouse, and on the number of the heirs in each case. Below are the possibilities and their respective rulings:

Cases that do not include a spouse:

1-If there is only one fixed-share heir, like the mother or the maternal brother or sister, he or she receives the entire *tarikah*, partly as his or her fixed share and partly as the remaining balance;

2-if it is a *category* of heirs, such as several grandmothers or several maternal siblings, it is distributed among them at the ratio of their number. The total number of shares is the same as the number of heirs;

3-if there are two or three categories, add up the shares and relate the shares to this total only. Disregard the balance.

For example, in the case of a mother and two daughters, the mother receives one-sixth and the daughters receive two-thirds. Rather than dividing proportionally the remaining share and adding each portion to the relative share, divide the *tarikah* into 5 equal portions and give the mother 1 and the daughters 4. In the case of a mother and 2 maternal brothers, the mother receives 1 share and the 2 maternal brothers receive 1 each, because the balance is supposed to be returned to those with fixed shares according to the ratio of their shares.

In the first example, the ratio of the mother's share to the total of the 2 fixed shares is one-fifth. So she receives one-fifth of the remaining share, and the 2 daughters receive four-fifths. Yet its fifth is a fraction, and in order to get sound non-fractionated numbers of the shares, the denominator of one-fifth (5) is multiplied by the total (6) to obtain a new total (30). The mother receives 5 and the daughters receive 20, for a total of 25. The remaining 5 shares are then distributed proportionately. The mother receives 1, so her total becomes 6. The 2 daughters receive 4, which when added to their original share becomes 24. Thus the process boiled down to the original simple distribution based on 5 equal lots.

The process of returning (*radd*) cannot occur in cases involving more than three categories, because such cases may or may not need to be adjusted by inflation (*'awl*). The first situation is called balanced (*'ādilah*), and the other is called inflated (*'ā'ilah*). Let's illustrate each of these cases:

An example for the first case: someone died leaving behind his or her mother (one-sixth, there are surviving siblings), a full sister (one-half), a paternal sister (one-sixth), and a maternal sister (one-sixth). The total is 1/6+1/2+1/6+1/6=6/6=1. This case is therefore *'ādilah*, "balanced."

In the second case, someone died leaving behind his mother (one-sixth), his full sister (one-half), a paternal sister (one-sixth), and 2 maternal siblings (one-third). The total is $1/6+1/2+1/6+1/3=7/6$. As we see, this case has to be *'ā'ilah,* "inflated", from 6 to 7. Neither case allows "returning," because there is nothing to be returned.

Notes:

1. Attention should be drawn to the fact that *radd* is not the same as *'awl,* which as we recall is an increase in the total number of shares leading to a proportionate reduction in their value.

2. Those cases involving *radd* and which do not include a spouse always have a total of six, though an adjustment may be needed, as in the following two examples: a-Someone died leaving behind 3 daughters (two-thirds) and a grandmother (one-sixth). The total is 5. However, the daughters' share cannot be divided by 3, the number of daughters. Therefore 3 is multiplied by 5, the total number of shares. The product, 15, allows the distribution in non-fractioned shares. The daughters receive 12, and the grandmother receives 3. The remaining one-sixth should be distributed proportionally.

b-If, in the above case, there are 2 grandmothers instead of one, 2 is multiplied by 3 (the number of daughters), and the product is multiplied by 5 (the total). The end result is 30. From this number, 24 shares are taken by the 3 daughters, and 6 are taken by the 2 grandmothers.

3. Cases in which there is no spouse but to which the procedure of *radd* (returning) is applied. This occurs with any of four bases, namely, 2, 3, 4, or 5. This is because the base is 2 when there are two-sixths, as with a grandmother (one-sixth) and a maternal brother (one-sixth) who also share equally the returned balance. When the base is 3, as

in the case of a mother (one-third) and a maternal brother (one-sixth), who also share proportionately the returned balance. (Eventually, the mother receives two-thirds of a total of 3, and the maternal brother receives 1 of 3. When the base is 4, as in the case of a mother (one-sixth) and a daughter (one-half). The balance, 2, is returned proportionately, and eventually, the mother's portion becomes 1 of 4, and the daughter's is 3.

The base may be 5 as it is in the case of a mother, a full sister, and a maternal brother. The mother gets 1 of 5, the sister gets 3, and the maternal brother gets 1 share. Likewise is the case which includes two-thirds and one-sixth, like two daughters and a grandmother. The daughters get 4 of 5, and the grandmother gets 1, as a total of a fixed share and a returned portion of the balance of 1 share. Similarly, it happens when there are the shares of one-half and one-third, as in the case of the mother and a full sister. The mother gets 2 of 6, which is one-third, and the sister gets one-half, 3.

All the above four bases, as we have seen, are from the total of 6 each, and none is *'ādilah* or *'ā'ilah*, as was clearly explained above.

CASES THAT INCLUDE A SPOUSE

The procedure of returning (*radd*) when the list of the heirs includes a spouse, is to deduct the fixed share of the spouse from the denominator of that same share, which has to be 1 of 2, in case it is one-half, or 1 of 4 in case it is one-fourth, or 1 of 8 in case it is one-eighth. Divide the balance by the number of the heir(s) qualified to benefit from the return to get their due share(s). In case it is one single heir or a category of heirs, the base of the case remains the denominator of the fraction of the conjugal share. Let's illustrate by an example for each of these two possibilities.

A woman died leaving her husband (one-half), and her mother (one-third). In addition to her fixed share, the mother receives the remaining one-sixth as *radd*. (As we may recall, a spouse cannot benefit from *radd*.) So the mother in this case receives a total of one-half of the *tarikah*.

A woman died leaving her husband (one-fourth, there are surviving offspring), and 3 daughters (two-thirds). The minimum multiple of 2 and 3, (the denominators of the shares), is 6. The husband receives 1 of 4, and the daughters get the remaining balance, 3, as a total of their fixed share and the remaining part in *radd*. In this case, the distribution was easy because the figure to be divided among the daughters, 3, fitted their number, which is also 3. If the number of the daughters is four, the base can then be 16.[23]

In cases in which more than one category will benefit from *radd,* then the base of *radd* should be the denominator of the spouse's share. Then this procedure is to be followed: analyze and distribute the shares among the heirs, disregarding the conjugal presence, and then compare it with the balance remaining from the conjugal share. If it is divisible by these fractions, then it is fitting and good.

For example, a man died leaving his wife (one-fourth), 3 of 12, his mother (one-sixth), 2, and 2 maternal brothers (one-third), 4. A total of 3 shares are left, and are therefore due to the mother and the two maternal brothers proportionately. It is better to stop here and not go into the complex analysis of how this division has been reached. Each person involved here receives 1 from the 4 parts of the *tarikah*.

---

[23] Resulting from the multiplication of 4, the denominator of 1/4, by the number of the daughters, also 4.

If the balance remaining from the denominator of the conjugal share is not so fitting or divisible by the fractions denoting the shares due to the other heirs, then the balance to be returned should be multiplied by the conjugal denominator. This denominator has to be different from the assigned conjugal share, or rather, it is the numerator of the fraction denoting that share. This sort of differentiation arises because the balance after deducting the conjugal share is always different from the base of *radd*. It also does not have a common dividing factor that could be multiplied by the denominator of the conjugal share, for the balance remaining after the conjugal share is either 1 (when the conjugal fixed share is one-half), or 3 (when the conjugal share is one-fourth, or 7 when the conjugal share is one-eighth), whereas the bases of the *radd* cases are 2, 3, 4, or 5.

As we can see, these bases are different from the 1 that remains when the husband's share is one-half, and from the 7 that remains after the wife takes one-eighth as her share. Never does a balance remain after the husband's share from the bases of *radd,* except in the case of 2. As for the balance 3 that remains from one-fourth, it is obviously divisible by 3 when it is the base of *radd*. However, it is opposed to 2 as a base, which also cannot exist when 5 is the base because when 5 is the base of *radd* and there is a one-fourth fixed share, the case inflates and there is no *radd*.

Let's take the example of a husband, mother and 2 daughters. If the husband is not there, and the mother receives one-sixth and the daughters receive two-thirds (a total of five-sixths), and a balance of one-sixth is to be returned, and the procedure of *radd* is applied, the base is 5. When the husband is taken care of, as he should be,

the case will be $1/4+1/6+2/3=13/12$, thus inflated from 12 to 13.

We come now to the main issue: What happens when those who are to benefit from *radd* belong to more than one category of heirs, and the case includes a spouse, and the remaining balance from the denominator of the conjugal share is not divisible by the fractions denoting the shares? The rule then is to multiply the balance by the denominator of the conjugal share. The resulting product is then the base of the case at hand. As a result, the bases of all cases, including those which list a spouse, are eight, which are as follows:

a)   The number 2, as in the case of a grandmother and a maternal brother. Each receives a one-sixth as a fixed share, and then a one-third as a *radd* adjustment. In a final analysis, each is getting a one-half share. Another example of this is a case in which the heirs are the husband (one-half) and the mother (one-third), who also receives the *radd* balance of one-sixth. Nothing can be returned unto a spouse as such.

b)   The number 3, as in the case of a mother (one-sixth) and 2 maternal brothers or sisters or mixed (one-third). The total is one-half, and the balance of three-sixths is returned to them proportionately. In the final analysis, each party receives a one-third share.

c)   The number 4 is as in the following two cases. The first one involves a mother (one-sixth) and a daughter (one-half). The total is $1/6+1/2=4/6$ (or $2/3$). The balance, one-third, is returned to the daughter and the mother proportionately; the mother receives 1 of 4, and the daughter receives 3 shares. The second one involves a mother (one-sixth), a wife (one-fourth), and 2 maternal siblings (one-third). The total is $9/12$ ($3/4$). The balance, one-fourth, is returned to the mother and the 2

maternal siblings proportionately. The mother receives one-fourth and the 2 siblings receive 1 each. The wife receives nothing as *radd*.

d) The number 5, as in the case of a mother (one-third) and a full sister (one-half). The total is five-sixths. The balance, one-sixth is returned to them proportionately.

e) The number 8, as the base in the case of a wife (one-eighth) and one daughter (one-half), a total of five-eighths. The daughter receives the balance of three-eighths by herself.

f) The number 16, as the base in such cases as a wife (one-fourth), a full sister (one-half), and a paternal sister (one-sixth). The total is $1/4+1/2+1/6=11/12$. The balance of one-twelfth is to be returned proportionately to these heirs on the basis of the ratio of 1 share to the total of 11.

g) The number 32, as the base in such cases as a wife (one-eighth), a daughter (one-half), and a son's daughter (one-sixth).

h) The number 40, as the base in such cases as a wife (one-eighth), a daughter (one-half), a son's daughter (one-sixth), and a grandmother (one-sixth). The total is 23/24. The balance, 1, is to be returned to the mother, the daughter, and grandmother—nothing of it to the wife.

To make it very clear, let's repeat the rules: In distributing the *tarikah* or its balance among the *dhawu al arḥām*, there are two schools of thought. The first one is that the *tarikah,* or its remaining balance after calculating the fixed shares, is returned proportionately to those with fixed shares according to the ratio of their respective shares. The only exception are the spouses. If there is no fixed-share heir and the state treasury is not managed fairly and effi-

ciently, according to the opinion of the majority, the *tarikah* or its balance goes to the *dhawu al arḥām,* giving each the share due to the heir through whom he or she is related to the deceased. Thus the children of the daughter receive her share, those related through the sister receive her share, and the brothers' daughters and the father's brothers' daughters receive the shares due to their fathers. The mother's father and her brother receive the mother's share, and the father's sister and the father's maternal uncle's brother receive the father's share. The second opinion is that there should be no return to the *dhawu al arḥām.* Rather, the idle wealth should be spent to benefit the Muslim community.

DIVIDING THE *TARIKAH*

Dividing the *tarikah* is based on the mathematical rule according to which an heir's share, in relation to the total *tarikah* conveyed in an arithmetic fraction in relation to the total *tarikah*, should remain as it is in relation to the total arrived at to make sound non-fraction figures from the total of the *tarikah.* For example, the husband's one-half share from a total of 5 should remain one-half, as it is when the total is inflated to 10 or 20, for example. We also can benefit from two mathematical rules.

First, the total of the first and the fourth figures of the numbers of four consecutive figures in an arithmetic progression is the same as the total of the two middle figures. For examples: 1, 2, 3, and 4. 1+4=2+3=5. By knowing three parts of the an arithmetic progression, we can easily get the missing part.

Second, the product of multiplying the two middle figures in a progressive progression (i.e., 2, 3, 4, and 6) is equal to the product resulting from multiplying two middle figures. And so, when one of the two segments of a multiplication is not given, and when the other segment is

known and the product of the multiplication is given, the unknown figure can be arrived at by deduction or dividing, as the case might be.

Let's repeat: The division and distribution of the *tarikah* is based on rules applicable to any set of four figures in an arithmetic progression. This is because the ratio of each heir's actual share to the adjusted total is the same as the ratio of the fraction denoting his or her entitlement to the total of the *tarikah*, which remains as it is.

Moreover, the actual nature of the material being inherited may be classified into two categories: First, a division which may easily lead to partition by fractions representing shares, like when the *tarikah* consists of money or something whose value is estimated by numbers, weight, or measure.

Second, the *tarikah* may consist of or include something that cannot be divided, such as a piece of real estate (e.g., a house or something else consisting of parts that must remain an integral whole for the item to exist). In such a case, resort may be made to the price or the value of the property, or an assumption that the property consists of a certain number of portions, like 24 parts. For example, say that someone died leaving a *tarikah* valued at $24,000, and his wife, his daughter, and his parents. His wife receives one-eighth ($3,000), his daughter receives one-half ($12,000), and his mother receives one-sixth ($4,000). This is a total of 19,000. His father receives the balance ($5,000).

If the *tarikah* cannot be so easily divided, on account of any reason such as the inflation of the total (*'awl*), there are some ways of solving such cases:

First, multiply the fraction representing the share of each heir by the adjusted or inflated total, and then divide the product over the adjusted or the inflated figure.

For example, in the case of a husband (one-half), the mother (one-third), and an agnatic sister (one-half), the total is eight-sixths. Since the division does not lead to sound non-fractioned shares, 8 is multiplied by 3 (the number of heirs) to obtain 24. However, this proportion cannot be maintained, and therefore 24 is multiplied by 3 to get 72. The husband receives 3x9=27, similarly, the sister receives the same amount, and the mother receives 2x9=18.

Or, relate each share to the adjusted total and then give each heir his or her share as it relates to the *tarikah* at this ratio. The husband's share is 3 to 8, a total of 1/4+1/8=3/8 of the *tarikah*, and three-eighths of 24 is $9. The sister also receives $9, and the mother receives $6.

Exercises

1. Two men, each a paternal brother (*'amm*) of the other. Explain how can this be.

2. Two men, each a maternal uncle (*khāl*) of the other. Explain how can this be.

3. A man met another man and greeted him, saying: "Welcome my *'amm* (my father's brother), my *khāl* (my mother's brother)." Explain how can this be.

4. Two men met, and each greeted the other as his *khāl*'s son. Explain how can this be.

5. Two women met with 2 men, who they greeted, saying: "Welcome our 2 sons, our 2 husbands, and the sons of our 2 husbands." Explain how can this be.

6. A person died and was inherited from by his *khāl* but not by his *'amm*. Explain how can this be.

7. A pregnant woman saw a group of people dividing an inheritance among themselves. She told them: "Wait. I am expecting. If I have a girl, she will share the inheritance

with you. If I have a boy, it will be all yours." Explain how can this be.

8. A couple inherited one-third of the *tarikah*, whereas another couple inherited two-thirds. Explain how can this be.

9. Someone died, and a man and his daughter each received one-half of the *tarikah*. Explain how can this be.

10. A woman inherited from 4 full brothers separately, one after the other. At the end, she realized that she had obtained one-half of their total wealth. Explain how can this be.

11. Someone visits (or visited) someone else who was sick. He advised him to make his will. The sick person told him: "If I should die, it is only you, your parents, your 2 brothers, and your father's 2 brothers who will inherit from me." How was this visitor related to the sick person?

12. A man visits a sick man. The sick man says: "I shall be inherited by your 2 wives, your 2 daughters, your 2 sisters, your paternal aunts and your maternal aunts." Explain how this can be.

13. A man sat in the company of 16 women whose faces were unveiled. Someone blamed him, but he defended himself, saying: "These are not strangers. Four of them are *banātī* (my daughters), 4 are *akhawātī* (my sisters), 4 are *'ammatī* (my father's sisters), 4 are *khālātī* (my mother's sisters), and all of them are from *zawjatī* (my wives). Explain how can this be.

14. A woman is an *'ammah* (a paternal aunt) of a man who is in fact her *'amm* (her paternal uncle). Explain how can this be.

15. A woman is the *khālah* (mother's sister) of a man who is her *khāl* (her mother's brother). Explain how can this be.

16. A man dropped in to offer his condolences to a bereaved family, and found them busy dividing the *tarikah*. He told them: "Do not hurry. My wife has been away for sometime. If she is dead, I have a share in the inheritance. If she is still alive, she will inherit and I will not." Who is he?

17. Another man called and said: "If my wife who is now away is alive, I alone will inherit. But if she has died, we will receive nothing." Who is this man?

Here are the answers:

1. Two men, each one married to the mother of the other, who each had a son.

2. Each man was married to the daughter of the other, and each had a son. So, each son is the *khāl* of the other.

3. A maternal brother of Khālid, for example, married Khālid's paternal sister, or vice versa, and both had a son. Thus, Khālid is his *'amm* and his *khāl*.

4. Two men married the sister of the other, and each had a son. So each son is the son of the *khāl* of the other.

5. Each man was married to the mother of the other.

6. The *khāl* in this case is the son of the brother of the deceased. Someone married a woman, and his son married her mother, and each had a son. In this case, the father's son is the father's brother of the son's son, and the son's son is the brother of the mother of the father's son. Should the father's son die, leaving a son's son and a father's brother as well, he has died leaving his maternal uncle who is in fact the son of his brother and his paternal uncle. Thus, the inheritance belongs to his brother's son and not to his paternal uncle.

7. The pregnant woman is the wife of the son of the deceased, and the living potential heirs are the parents, the husband, and a daughter. She is the daughter of the son of

the deceased, and the wife of the son of another son of his, apart from two daughters.

8. The couple who inherited one-third of the *tarikah* were the parents of the deceased, and the couple who inherited two-thirds are a son's daughter of the deceased and son's son's daughter from a different marriage.

9. A woman died leaving behind her husband, who is also her father's brother's son, as well as the daughter she had by him.

10. They were 4 full brothers, and the woman married them one after the other. They have the following amounts, respectively: $800, $600, $300, and $100. When the first one died, she inherited one-fourth ($200), and each surviving brother inherited $200. Thus the second brother accumulated a total of $800, the third brother had $500, and the fourth had $300. Then the second brother died, leaving $800, from which she received $200.00, thus making a total of $400. The surviving 2 brothers inherited the balance, so the third had $800 and the fourth had $600. Then she married the third brother, who soon died leaving $800, of which she got $200. She thus accumulated a total of $600, and the balance went to the fourth brother, who accumulated $1,200. Then she married the last brother, who also soon died. She received one-fourth of his *tarikah*, $300, thus making a total of $900, which represents one-half of the total wealth of the 4 full brothers.

11. The man in good health was the maternal brother of the sick person, and his parents were his paternal uncles. And so, they were the mother, 3 maternal brothers, and 3 paternal uncles.

12. The man who was visiting the sick person had 2 wives. One wife was the mother of the sick man, and the other was his paternal sister. The 2 daughters of the healthy man were the maternal sisters of the sick person. His 2

maternal sisters were the paternal sisters of the sick man. As for his paternal aunts, one was his full paternal aunt and the other was his father's maternal aunt. They were also his *khālāt*. Yet, all 4 were the wives of the sick man. In short, they were his mother, 4 wives, 2 maternal sisters, and 3 paternal sisters.

13. A man married a woman, his father married her daughter, his father's father remarried another of her daughters, his mother's father married another daughter, and the woman and each of her 4 daughters gave birth to 4 daughters.

14. Khālid's maternal brother married his father's mother, from whom she gave birth to a daughter. So, she is the paternal aunt of Khālid and he is her paternal uncle.

15. Khālid's mother's father married his paternal sister, who gave birth to a daughter. He is her maternal uncle, and she is his maternal aunt.

16. He is the paternal brother of the deceased and the absent wife is the maternal sister of the deceased.

17. A woman died leaving her husband, mother, father's father, maternal sister, and paternal brother. A man married the maternal sister while she is absent. If she is alive, the mother's share drops from one-third to one-sixth.

Notes:
Should a husband divorce his wife for the first or the second time while on his deathbed and then die before the end of her waiting period (whether 3 months, 3 monthly menstrual cycles, or until the delivery of a child), this divorce should be disregarded and she should receive her full share in his *tarikah*. The reason for this is that the couple remain husband and wife until the end of the waiting period. Moreover, the apparent intention of the husband to

deprive his wife of her share of his inheritance should not be realized.

During the Caliphate of 'Uthmān Ibn 'Affān, 'Abd al-Raḥmān Ibn 'Awf divorced his wife while he was on his deathbed. The Caliph ruled that his widow should receive her full inheritance, even if this was the third divorce. This went against the views of the majority of jurists, who say that a wife who is divorced irrecoverably by her husband's saying: "I divorce you," three times, receives nothing, as the couple is no longer husband and wife. In the author's view, a wife so harshly treated should not be deprived of her rights throughout her waiting period. Suspicion of the intent to deprive the bereaved wife of her right to inherit appears to exist in both situations, and one strongly feels that the wife should retain her right irrespective of any artificial divorce.

The Titled Cases

During our study, we came across some cases which became so renowned that they were given a name. It will be useful here to give an alphabetical list of such cases. Although they have been thoroughly analyzed in the book, we will briefly repeat these analyses for greater clarity.

1. *Al Akdarīyyah*: A husband (one-half), a mother (one-third), the father's father (one-sixth) and an agnatic sister (one-half). As the father's father and the sister are here *'aṣabah*, their shares equal one-sixth and one-half, are added up, and then from the sum the father's father gets double the share of the sister. (This is the only case in which the agnatic sister has a fixed share with the father's father.) The distribution of the shares is realized in sound amounts from a total of 27.[24]

---

[24] Should there be also a brother, he gets nothing since nothing has remained for him. And if there are two agnatic sisters instead of

2.*'Ashrīyyat Zayd*: A father's father (*jadd*), a full sister (*shaqīqah*), and a paternal brother (*akh li ab*). The full sister receives one-half, (2.5 shares out of 5), the grandfather receives 2, and the brother receives the remaining one-half. To obtain sound figures, multiply by 2. The product is 10 (*'asharah* in Arabic), and thus it is called *'ashrīyyah* or *'asharīyyah*.

3. *Al Gharrāwatān* or *Al 'Umarīyyatān*: There are two cases here:

I-a husband (one-half), a mother (one-third of the balance, or one-sixth), and a father (one-third),

II-a wife (one-fourth), a mother (one-third of the balance), and a father (the remaining shares). These cases are called *al 'Umarīyyatān*, a dual form of *'Umarīyyah*, an attribution to Caliph 'Umar, the first authority to encounter and resolve them. He called the mother's shares *thulūth al bāqī* (one-third of the remainder) although it amounted to one-sixth and one-fourth, to respect the relevant terms used in the Qur'ān 4:11. It should be noted, however, that each case changes if there is a surviving son or daughter, as the presence of either reduces the mother's share to one-sixth. This would then be a different case.

4. *Al Ḥajarīyyah:* A husband (one-half), a mother (one-sixth), maternal siblings, and 2 or more full brothers; (both the maternal siblings and the full brothers share the remaining one-third). *Ḥajar* means "a stone." The case is attributed to this word, because when this case was first submitted to Caliph 'Umar, he gave the maternal brothers a full one-third and left nothing to the full brothers, who were *'aṣabah* and so had no fixed share. Thus, they were blocked

---

one, it becomes no longer *akdarīyyah* and no *'awl*; the husband bets 6 of 12, mother 2, father's father 2, and the two sisters 2, 1 for each. $6+2+2+1+1=12$.

once those with fixed shares divided the entire *tarikah* among themselves.

When an identical case arose later on and the full brothers feared that he was going to block them, they pleaded with the Caliph, saying: *ḥabb anna abānā ḥajarun mulqān fī al yamm,* "Let's presume (or assume) that our father was a piece of stone thrown into the ocean." They meant to say: "Treat us at least as maternal brothers, sharing our mother with them." So Caliph 'Umar decided that all siblings should share the one-third.

The case has several other titles: *al yammīyyah,* for some of the heirs used the word *yamm* (ocean, river); *al ḥimārīyyah,* as some of the protesting heirs used the word *ḥimār* (donkey) instead of *ḥajar; al musharrakah* and *al mushtarakah* (the shared inheritance), for the heirs share the one-third share. If the agnatic siblings included a girl (sister), she receives as much as her brothers. Moreover, if the case included a grandmother (instead of a mother), she inherits the one-sixth that would have been taken by the mother.

5. *Al-Dināriyah Al-Kubrā.* A wife (one-eighth), two daughters (two-thirds), a mother (one-sixth), 12 brothers (24, 2 each), and 1 sister (1 share). This is also called *al-shākiyah,* the case of a complaining heir. It received this name because a woman intercepted Imām Alī Ibn Abū Ṭālib and held the stirrup of his horse while complaining to him that Shurayḥ, a judge in Kūfah, had given her only one *dinār* from her brother's *tarikah* of 600 *dinārs*. The Imām told her: "Perhaps your brother left, besides you, his wife, 2 daughters, his mother, and 12 brothers?" She replied that he had, and thus the Imām told her: "You got your fair share, and Shurayḥ did no injustice to you."

6. *Al-Dināriyah Al-Sughrā:* This consists of two cases:

a-3 wives (one-fourth), 2 grandmothers (one-sixth), 4 maternal sisters (one-third), and 8 agnatic sisters (two-thirds). The total of 12 is inflated to 17, and the heirs are 17 women. If the *tarikah* consists of 17 *dinārs*, each receives one. As they are all women. The case is also called *umm al furūj* (mother of chaste women);

b-*Al-Dināriyah Al-Sughrā,* 2 maternal sisters and 4 paternal sisters. They inherited 6 *dinārs*, each receiving 1 *dinār*.

7. *Al Gharrā':* A husband (one-half), 2 maternal sisters (one-third), and 2 (full or paternal) sisters (two-thirds). It was so called, perhaps, in view of its fame. It is also called *al Marwānīyyah*, after Marwān Ibn al Ḥakam, the fourth Umayyad ruler (64-65 AH), as this case arose during his reign.

8. *'Ishrīnīyyat Zayd.* A father's father, a full sister, and 2 paternal sisters. Apparently Imām Zayd counted the total heirs as 5: 3 girls as 1, and counting the father's father as 2. The sisters are transformed into *'aṣabah* heirs by the father's father, who should then receive double the share of the female. Imām Zayd gave the sister one-half of that total, the father's father received 2 shares, and the paternal sister received the remaining balance of one-half. In order to make sound shares, 5 was multiplied by 2 (the denominator of one-half) to obtain a product of 10, as it was in his *'ashariyyah*. The father's father received 4 shares (two-fifths), the full sister received 5, and the remaining 1 share was for the two paternal sisters. Then, he multiplied 10 by 2, and from the new total of 20, the father's father received 8, the full sister received 10, and each paternal sister received 1 from the remaining 2 shares. (Twenty is *'ishrīn* in Arabic.)

9. *Al Kharqā'*: A mother (one-third), 3 from a total of 9. The balance, 6, is divided between the sister, 2, and the father's father who gets 4. This is a ruling made by Zayd and followed by Imām Al-Shāfi'ī. Although its original base was 3, the total is inflated to 9 to provide a sound share for each heir. According to 'Uthmān, each heir receives 3 shares. Yet, the grandfather blocks the siblings, according to Abū Bakr and Imām Abū Ḥanīfah. However the majority, led by Zayd Ibn Thābit, let the sister share the balance, receiving one-half the amount received by her grandfather. This case is so-called on account of the widely varied views over it.

10. *Al Ma'mūnīyyah*: A father (one-sixth), a mother (one-sixth), and 2 daughters (two-thirds). However, before distributing the *tarikah*, a daughter dies and leaves behind the other members of this set of heirs who, in relation to her, were the father's father, a mother's mother, and an agnatic sister. Her one-third is divided among this set of heirs. The first and second cases can be resolved from a total of 6.

However, as explained earlier, the resolution depends on whether the deceased in the first case was a man or a woman. If it was a woman, the grandfather in the second case would be the mother's father, who is not a legal heir, and the surviving daughter could thus be a full or paternal sister. If the deceased in the first case was a man, the surviving daughter would be an agnatic sister. This complex case can be resolved from a total of 54. The remaining balance has to be distributed either by spending it on the welfare of the Muslim community or returning it to the heirs on a proportional basis. On the other hand, the sister in the second case could be a full or maternal sister, and their shares differ.

11. *Al Minbarīyyah*: A wife (one-eighth), a father (one-sixth), a mother (one-sixth), and 2 daughters (two-thirds).

This is the case about which a man asked Imām Alī Ibn Abū Ṭālib while the latter was delivering a sermon from the *minbar* (pulpit) in the Kūfah mosque. The Imām replied instantly: "Her (the wife's) share has become one-ninth," and continued with his sermon.

12. *Al Mubāhalah:* A husband (one-half), a mother (one-third), and an agnatic sister (one-half). As we can see, the total is inflated to 8. It is said that this was the first case to use inflation *('awl)*. 'Abd Allāh Ibn 'Abbās objected to it very strongly, believing that the sister should get the remaining one-sixth, and challenged the jurists who upheld it to *mubāhalah* (to go out in the open and pray for the wrong party to be punished). Hence it is so called.

13. *Mukhtaṣarat Zayd:* A mother (one-sixth), a father's father, a full sister, a paternal brother, a paternal sister. It is equal for the grandfather to share the balance (five-sixths) with the 3 siblings (whose number amount to 2 males), thus making a total of 3 with the grandfather. Sharing or receiving one-third of that balance results in receiving the same amount. On the basis of sharing, the total is inflated to 108. The mother receives 18, the full sister receives 54, the grandfather receives 30, the paternal brother receives 4, and his sister receives 2. Since these figures are divisible by 2, the shares can be reduced *(mukhtaṣar)* to 9, 27, 15, 2, and 1. Hence the case is called *mukhtaṣarah*.

As a matter of fact, the case can be resolved in an even shorter way. Each case that includes one-sixth and one-third of the balance can usually be inflated to 18. Of this figure, the mother receives 3, the full sister receives 9, the father's father receives 5, and the remaining share goes to the male and the female siblings (the male receives double the amount of the female). Yet, since 1 is not divisible by 3, we multiply 3 by 18 and, from the

new total (54), the heirs receive the same amounts of
their shares.

14. *Tis'īniyyat Zayd* (the case that Zayd Ibn Thābit re-
solved from a total of 90): A mother (one-sixth), a father's
father, (one-third of the balance, five-sixths, as it is better
for him than sharing or receiving one-sixth), a full sister, 2
paternal brothers, and a paternal sister. The case should be
resolved from a total of 18. The mother receives 3, the
grandfather receives 5, and the full sister receives 9. The
balance, 1, remains for the 2 male and 1 female siblings.
However, they need an amount divisible by 5 to receive
their rightful share. Since 1 is not divisible by 5, we have to
multiply 5 by 18, and from the new total of 90 (*tis'īn*), the
case is easily resolved. The mother receives 15, the grand-
father receives 25, the full sister receives 45, each paternal
brother receives 2, and the paternal sister receives 1 share.

15. *Umm al Furūkh*: A husband (one-half), a mother
(one-sixth), 2 maternal brothers (one-third), a full sister
(one-half), and a paternal sister (one-sixth). As
$3+1+2+3+1=10$, the case is inflated into 10. *Al Furūkh* is a
broken plural of *farkh* (a chick), as the case has let many
chicks come out of it.

16. *Al-Gharrā'* (a): Husband, two maternal sisters, and
two full sisters. The husband gets one-half, the maternal
sisters get one-sixth each, and the two full sisters receive
two-thirds. The original total, 6, is inflated into 9, of which
the husband gets 3, the maternal sisters get 1 each, and the
full sisters get 2 each ($3+1+1+2+2=9$).

17. *Al-Gharrā'* (b): Four wives, one-fourth, 2 full sis-
ters, two-thirds, and two maternal sisters, one-sixth each.
The total is 15/12, of which the four wives receive 4 dinars,
one dinar each. It is therefore called *Al-Dīnārīyyah* as well.

18. *Al-Nāqiḍah*, "The Disproving Case": Husband,
one-half, mother, one-sixth, 2 maternal brothers, one-third.

The total is 6. There is no inflation. 'Abd Allāh Ibn 'Abbās gives the mother in such a case which has also two siblings, according to his rule, a full third. If we should do so, the mother's share would be 2 of a total of 6, thus causing inflation of the total 6 into 7. So 'Abd Allāh Ibn 'Abbās had either to reduce the mother's share to 1/6 on account of the presence of two siblings, or to agree to the procedure of *'awl* (inflation). And as such, this case is called *Al-Nāqiḍah*.

19. *Al-Dīnārīyyah Al-Kubrā*, "The Greater Dīnārīyyah Case": Wife, 2 daughters, mother, 12 agnatic brothers, and one agnatic sister. This case has been already treated. We may recall how Imām 'Alī confirmed that the sister's share was correctly one *dīnār* out of 600 *dīnārs* left by her brother.

20. *Umm Al-Banāt*, "The Daughters' Mother": 3 wives, one-fourth, 4 maternal sisters, one-third, and 4 agnatic sisters, two-thirds. (3+4+8=15) So the case is inflated from 12 to 15. It is so called because all the heirs are *banāt* (women).

21. *Al-Mālikīyyah* (attributed to Imām Mālik): Husband, one-half, mother, one-sixth, father's father, one-sixth, a maternal brother (0), and a paternal brother, one-sixth. This way of the distribution of the *tarikah* in which the maternal brother gets nothing, is based on the Shāfi'ī *madhhab* according to which the maternal brother, not the agnatic brother, is blocked by the father's father. There is no inflation.

The Mālikī school, however, gives the total balance remaining after the husband and the mother have taken their shares, to the father's father, contrary to the views of Zayd ibn Thābit. Hence the case is called *Al-Mālikīyyah*.

22. *Al-'Aqrab* (The Scorpion), "The Semi-Mālikīyyah Case": The ruling of this case by the Shāfi'ites is the same as the above. The disciples of Imām Mālik, however, de-

prive the full brother by the father's father who, according to them, tells the full brothers, "I am the one who blocks the maternal brothers, and I am therefore more entitled to take their share."

23. *'Aqrab Taḥt Al-Ṭawīyyah*, "The Hidden Scorpion":

(a) Husband, one-half, mother, one-third, a maternal sister, one-sixth, and a daughter who is denied by all the other three heirs who absorb the *tarikah*.

(b) If the maternal mother acknowledges the legitimacy of the daughter, she deprives herself, as maternal siblings are blocked by the daughter. The daughter does not affect the other two who deny her. Yet, the remaining 1 cannot be divided between that pretended daughter and an *'aṣabah* heir. So, 6 is added to 1=7. And 7 is multiplied by 6=42. Of this total, the husband gets 21, the mother receives 14. The acknowledged daughter gets 6 and 1 goes to the *'aṣabah.*

The Shāfiʿites, in the case of husband, mother, and a girl who claims to be the daughter of the deceased person but the other heirs deny her claim and she has no evidence to prove it, give these heirs their shares in full. So, the husband gets one-half (3 of 6), the mother gets one-third (2 of 6), a total of 5. The remaining balance, one-sixth (1), goes to the *'aṣabah*. If there is no *'aṣabah*, it goes to the mother and no part of it returns to the husband, as no return goes to a spouse. So, the mother gets a total of 3, as much as the husband.

If the heirs acknowledge the claim of the girl, then it will be an ordinary case of a daughter, mother, and husband. The daughter gets one-half (6 of 12), the husband gets one-fourth (3 of 12), and the mother gets one-sixth (2 of 12). This is a total of eleven-twelfths. The remaining one-twelfth goes to the *'aṣabah*. If there is no *'aṣabah*, it is returned to the daughter and the mother at the ratio of 3:1. The total of 3+1=4. And 4 multiplied by 12 is 48. The

daughter gets 24, the husband 12, and the mother gets 8, a total of 24+12+8=44. The balance, 4, goes to the *'aṣabah*. If there is no *'aṣabah*, the remaining 4 shares go to the daughter and the mother at the rate of 3:1. The daughter takes 3, making her total 27, and the mother gets 1, making her total 9 (27+12+9=48).

Should the spouse in that case be a wife, the distribution has to be from a total of 96 to provide sound shares. The daughter receives one-half (48), the wife receives one-eighth (12) and the mother receives one-sixth (16), making a total of 76, and leaving a balance of 20 to be divided between the daughter and the mother at the ratio of 3:1. Thus the daughter receives 48+15=63, the mother receives 16+5=21, and the wife remains with 12. As these shares are all divisible by 3, it may be shortened to 32, the daughter receiving twenty-one, the mother receiving seven, and the wife receiving four.

CONCLUSION

It will be more inspiring and befitting to conclude this modest work by quoting some *hadīths* traced to the Messenger of Allah, peace and blessings be upon him, which are relevant to theme of inheritance, especially those in which the study of inheritance is praised or encouraged. This will also be followed by some quotations attributed to some of the Prophet's Companions and early scholars, in which this pursuit is praised and urged. First, let's quote from the Prophet's words:

Abū Hurayrah related that the Prophet told him: "Abū Hurayrah. You, all of you, should learn the *farā'iḍ* (the inheritance rules) and teach them (to the succeeding generations). This is equivalent (in merit) to all areas of knowledge. The rules are easily forgotten, and they are the first area of knowledge that my nation will lose."

'Abd Allāh Ibn Mas'ūd related that he had heard the Messenger of Allah say: "Learn the Qur'ān and teach it to the people. Study the *farā'iḍ* (the inheritance rules) and teach them. I will die, and knowledge can evaporate. It is likely that two (authorities, or two persons) will dispute over a case (of inheritance), and will be unable to find someone to resolve it for them."

Caliph 'Umar related that the Messenger of Allah said: "Study the *farā'iḍ,* the language, and the *Sunnah* as much as you care to teach the Qur'ān."

Abū Hurayrah said: "The Messenger of Allah was once asked about the *mīrāth* (inheritance) due to the paternal and maternal aunts. He said: 'I do not know, and will ask Jibrīl about it (when I see him next time).' Some days later, he asked: 'Where is the person who asked about the inheritance of the paternal and maternal aunts? Jibrīl came and revealed that such people receive no *mīrāth.*'"

Caliph 'Umar Ibn Al- Khaṭṭāb asked Imam 'Ali Ibn Abī Ṭālib: "Someone died leaving among the heirs his mother under another man?" The Imam said: "Her husband should avoid her until it is realized whether or not she was pregnant at the time of the death of the person being inherited."

The Imam was certainly correct, for if the mother should have contact with her husband before knowing whether or not she was pregnant at the moment of the death of the person being inherited, we will not be sure, if she becomes pregnant whether the pregnancy occurred after or before the death of the person being inherited.

'Abd Allāh Ibn 'Amr Ibn al 'Aṣ related: "Two persons who adhere to different religions cannot inherit from each other."

'Abd Allāh Ibn 'Abbās related: "The Prophet was asked how a *khunthā* should be inherited? He replied: 'On the basis of the exit of his urine.'"

Jābir also related: "If a baby dies at birth after screaming, the funeral prayer should be said over it and no one should inherit from it."

Ibn Mājah and others related: "A murderer cannot inherit from his victim." Ibn 'Abbās related from the Prophet: "A murderer should not inherit anything." Imām Aḥmad, following Caliph 'Umar and other authorities, said that if the context proves that the victim died as a result of an innocent action, there should be no deprivation. The jurists, however, agreed that the victim, if he survived the aggressor, can inherit from him.

Imām 'Abd Al-Razzāq Al-San'ānī related: A Christian died leaving his wife pregnant. She, however, embraced Islam before her delivery, and she died soon. Imām Al-Thawrī ruled that the baby should inherit both from his father as well as from his mother who became a Muslim before her delivery. *Al-Musannaf*, vi, 31.

A *Majūsīyy* (Magian) married his own daughter and she begot him two daughters. After his death, they all embraced Islam. Then one of the two daughters died. It was ruled that her full sister should get one-half of her inheritance, and her mother should take one-sixth, as she has been reduced from one-third by herself, as she was also the sister of her daughter, as well as by the other daughter who was also her sister. In other words, the case had two siblings who reduced the mother's share from one-third to one-sixth. Ibid., p. 30.

وَٱلْحَمْدُ لِلَّهِ رَبِّ ٱلْعَٰلَمِينَ

Bibliography

al Birrī, Zakarīyā, *Al Wasīṭ fī Aḥkām al Tarikah wa al Mawārīth*, 4th. ed. (Cairo: al Nahḍah al 'Arabīyyah Press, 1395/1975).

al Dārimī, 'Abd Allāh Ibn Bahrām (nicknamed Abū Muḥammad), *Sunan al Dārimī*, Dār al Fikr, (Beirut: 1414/1994).

Ibn Mājah, Muḥammad Ibn Yazīd al Qazwīnī (nicknamed Abū 'Abd Allāh), *Sunan Ibn Mājah* (Cairo: Dār al Ḥadīth, 1414/1994).

al Khudarī, al Shaykh Muḥammad, "Explanatory Notes on the Commentary of al Shaykh 'Abd Allāh al Shanshūrī on *al Rahabīyyah*," (Cairo: al Khudarī Royal Press, 1293). (This is a popular text on inheritance.)

al Maltāwī, Ḥasan Kāmil, *Fiqh al Mu'āmalāt according to Madhhab Mālik* (Cairo: 1972).

Al Nawawī, Imām Muḥīy al Dīn Ibn Sharaf, *Al Majmū': A Commentary on al Muhadhdhab* (Beirut: n.d.).

Praise and humble gratitude to Almighty Allāh. We cannot by any means sufficiently convey in words our debt to the Almighty. May all peace and blessings be upon our Master, Muḥammad Ibn 'Abd Allāh, and may His rewards and blessings be bestowed upon the Prophet's Companions, especially those who contributed so much to our understanding and appreciation of the topic of inheritance.

Index